
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 PART I

2 SECTION 1. Section 235-29, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§235-29 Apportionment of business income; percentage.

5 [All] (a) For taxable years beginning before January 1, 2020,

6 all business income shall be apportioned to this State by

7 multiplying the income by a fraction, the numerator of which is

8 the property factor plus the payroll factor plus the sales

9 factor, and the denominator of which is three.

10 (b) For taxable years beginning after December 31, 2019,

11 all business income shall be apportioned to this State by

12 multiplying the income by the sales factor."

13 PART II

14 SECTION 2. The purpose of this part is to adopt market-

15 based sourcing for purposes of apportioning income under the

16 Uniform Division of Income for Tax Purposes Act (UDITPA), part

17 II of chapter 235, Hawaii Revised Statutes. UDITPA governs the



1 imposition of the Hawaii net income tax to taxpayers that carry
2 on business both within and without the State. Historically,
3 UDITPA has sourced intangibles and services to the place where
4 the income-producing activity is performed or where most of the
5 costs of performance are incurred.

6 As intangible property and services have become a greater
7 part of the economy, states have transitioned to market-based
8 sourcing for intangibles and services. Market-based sourcing
9 imposes tax in the place where taxpayers' markets are located
10 rather than only the location of taxpayers' activities. Today,
11 more than half of all states have made the transition to market-
12 based sourcing. This part amends UDITPA to transition to
13 market-based sourcing for income from intangibles and services.
14 Specifically, this part changes the sourcing rules for the
15 Hawaii sales factor for sales of services or intangibles to
16 market-based sourcing.

17 This transition will ensure that Hawaii's income tax is
18 keeping up with the changing economy and will foster uniformity
19 with states that have also transitioned to market-based
20 sourcing. This will reduce inter-state complexity and simplify
21 inter-state compliance.



1 In addition, Hawaii's general excise tax utilizes a version
2 of market-based sourcing. Therefore, transitioning the net
3 income tax to market-based sourcing will increase consistency
4 and efficiency between the two taxes.

5 SECTION 3. Section 235-37, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§235-37 Apportionment; sales factor; nontangible**
8 **personalty.** Sales, other than sales of tangible personal
9 property, are in this State [~~if~~]:

10 (1) [~~The income producing activity is performed in this~~
11 ~~State, or~~] In the case of intangible property, to the
12 extent the intangible property is used in this State;

13 or

14 (2) [~~The income producing activity is performed both in~~
15 ~~and outside this State and a greater proportion of the~~
16 ~~income producing activity is performed in this State~~
17 ~~than in any other state, based on costs of~~
18 ~~performance.~~] In the case of a service, to the extent
19 the service is used or consumed in this State."



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PART III

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SECTION 4. Statutory material to be repealed is bracketed

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and stricken. New statutory material is underscored.

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SECTION 5. This Act shall take effect upon its approval,

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and shall apply to taxable years beginning after December 31,

6

2019.



Report Title:

Taxation; Business Income; Apportionment; Net Income Tax; Sales Factor; Market-based Sourcing

Description:

Replaces the current 3-factor formula for apportionment of business income with a single sales factor. Amends the rules for sourcing the sales factor for net income tax to impose market sourcing for sales of other than tangible personal property. Provides specific rules for intangibles and services.
(SB394 HD1)

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