A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

SECTION 1. The legislature recognizes that, pursuant to title 49 United States Code section 40116(b), the State is prohibited from imposing general excise taxes on the transport of passengers traveling in air commerce, and the sale of air transportation. The legislature also recognizes that the applicable federal law defines "air commerce" and "air transportation" to include interstate air commerce and interstate air transportation, both of which effectively include air transportation from one island of the State to another. The legislature finds, however, that federal law does not prohibit the State from imposing general excise taxes on the air transport of passengers when the transport is restricted to a single island.

The legislature further finds that, in Hawaii, many common carriers operate aircraft on routes that do not take passengers on interstate trips, such as helicopters used in the commercial touring of a single island. However, the legislature finds that
even when these aircraft operate solely within a single island, the department of taxation does not require their respective carriers to pay general excise tax on fares collected. The legislature further finds that this lack of collection is based on a misapplication of the decision rendered by the Supreme Court of the United States in Aloha Airlines, Inc. v. Director of Taxation of Hawaii, 464 U.S. 7 (1983). While the Supreme Court made clear that federal law proscribes the imposition of state and local tax on gross receipts derived from air transportation or the carriage of persons in air commerce, the decision must be read with the proper understanding of the federally-defined terms "air transportation" and "air commerce", both of which exclude intraisland travel. The legislature therefore concludes that the State may impose the general excise tax on aircraft tours that travel solely within a single island, without running afoul of the court's decision.

The purpose of this Act is to ensure the collection of the state general excise tax in instances in which the transportation of passengers is furnished by common carriers by the use of aircraft when the collection of the tax is not prohibited by federal law.
SECTION 2. Section 237-18, Hawaii Revised Statutes, is amended to read as follows:

"§237-18 Further provisions as to application of tax. (a) Where a coin operated device produces gross income that is divided between the owner or operator of the device, on the one hand, and the owner or operator of the premises where the device is located, on the other hand, the tax imposed by this chapter shall apply to each person with respect to the person's portion of the proceeds, and no more.

(b) Where gate receipts or other admissions are divided between the person furnishing or producing a play, concert, lecture, athletic event, or similar spectacle (including any motion picture showing) on the one hand, and a promoter (including any proprietor or other operator of a motion picture house) offering the spectacle to the public, on the other hand, the tax imposed by this chapter, if the promoter is subject to the tax imposed by this chapter, shall apply only to the promoter measured by the whole of the proceeds, and the promoter shall be authorized to deduct and withhold from the portion of the proceeds payable to the person furnishing or producing the spectacle the amount of the tax payable by the person upon
[such] that portion. No tax shall apply to a promoter with respect to [such] the portion of the proceeds as is payable to a person furnishing or producing the spectacle, who is exempted by section 237-23 from taxation upon [such] the activity.

(c) Where, through the activity of a person taxable under section 237-13(6), a product has been milled, processed, or otherwise manufactured upon the order of another taxpayer who is a manufacturer taxable upon the value of the entire manufactured products, which consists in part of the value of the services taxable under section 237-13(6), so much gross income as is derived from the rendering of the services shall be subjected to tax on the person rendering the services at the rate of one-half of one per cent, and the value of the entire product shall be included in the measure of the tax imposed on the other taxpayer as elsewhere provided.

(d) Where, through the activity of a person taxable under section 237-13(6), there have been rendered to a cane planter services consisting in the harvesting or hauling of the cane, or consisting in road maintenance, under a contract between the person rendering the services and the cane planter, covering the services and also the milling of the sugar, the services of
harvesting and hauling the cane and road maintenance shall be treated the same as the service of milling the cane, as provided by subsection (c), and the value of the entire product, manufactured or sold for the cane planter under the contract, shall be included in the measure of the tax imposed on the person as elsewhere provided.

(e) Where insurance agents, including general agents, subagents, or solicitors, who are not employees and are licensed pursuant to chapter 431, or real estate brokers or salespersons, who are not employees and are licensed pursuant to chapter 467, produce commissions which are divided between such general agents, subagents, or solicitors, or between such real estate brokers or salespersons, as the case may be, the tax levied under section 237-13(6) as to real estate brokers or salespersons, or under section 237-13(7) as to insurance general agents, subagents, or solicitors shall apply to each person with respect to the person's portion of the commissions, and no more.

(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 person with respect to the 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 four per cent tax under this chapter or chapter 239.

(g) Where transient accommodations are furnished through arrangements made by a travel agency or tour packager at noncommissioned negotiated contract rates and the gross income is divided between the operator of transient accommodations on the one hand and the travel agency or tour packager on the other hand, the tax imposed by this chapter shall apply to each person with respect to each person's respective portion of the proceeds, and no more.
As used in this subsection, the words "transient accommodations" and "operator" shall be defined in the same manner as they are defined in section 237D-1.

(h) Where the transportation of passengers or property is furnished through arrangements between motor carriers, and the gross income is divided between the motor carriers, any tax imposed by this chapter shall apply to each motor carrier with respect to each motor carrier's respective portion of the proceeds.

(i) Where the transportation of passengers is furnished by a common carrier by the use of aircraft, any tax imposed by this chapter shall apply; provided that the transportation furnished begins and ends within the airspace of a single island of the State and is therefore not considered:

(1) Air commerce; or
(2) Air transportation,

as defined by title 49 United States Code section 40102.

(j) As used in this section:
"Carrier" means a person who engages in transportation, and does not include a person such as a freight forwarder or tour packager who provides transportation by contracting with others,
except to the extent that [seek] the person oneself engages in transportation.

"Contract carrier" means a person other than a public utility as defined under section 239-2 or taxicab, which under contracts or agreements, engages in the transportation of persons or property for compensation, by land, water, or air.

"Motor carrier" means a common carrier or contract carrier transporting persons or property for compensation on the public highways, other than a public utility as defined under section 239-2 or taxicab.

"Public highways" has the meaning defined by section 264-1 including both state and county highways, but operation upon rails shall not be deemed transportation on the public highways."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.
SECTION 5. This Act shall take effect on July 1, 2020.

INTRODUCED BY:  

JAN 09 2020
Report Title:
Transportation; Taxation; Aircraft

Description:
Ensures the collection of the state general excise tax in instances in which the transportation of passengers is furnished by common carriers by the use of aircraft when the collection of the tax is not prohibited by federal law. Limits imposition of tax to flights that occur within the airspace of a single island of the State.

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