

JAN 21 2022

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that the State's shipping
2 industry is critical to the people of Hawaii. It is the means
3 by which most goods come to the islands to support our lives
4 thousands of miles away from any continents.

5 The legislature also finds that, because nearly all goods
6 are imported into the State and then transported between our
7 islands, the costs of goods are much higher than nearly anywhere
8 else in the United States. As such, Hawaii is extremely
9 sensitive to the costs of goods, including the fees and taxes
10 that are associated with shipping.

11 The legislature further finds that Hawaii's general excise
12 tax is intended to be a comprehensive tax that covers nearly all
13 levels of transactions, not just at the point of sale. However,
14 it has been the policy of the legislature that certain
15 transactions should not be taxed. As a result, certain
16 exemptions are recognized under the general excise tax law.



1 The legislature finds that current state law already
2 recognizes that amounts received or accrued from certain broad
3 categories of shipping activities, such as loading and unloading
4 of cargo, transporting of pilots, rigging gear, checking freight
5 and similar services, and usage of moorings and running dock
6 lines, are exempt from the general excise tax.

7 The legislature also finds that the department of taxation
8 has issued guidance regarding factors to be considered when
9 determining whether or not amounts received as fees or taxes
10 imposed on a third party and collected by the taxpayer should be
11 taxed. For example, in 2008 the department issued Announcement
12 2008-05, which stated that rental motor vehicle customer
13 facility charges are not subject to the general excise tax
14 because:

- 15 (1) The charges are assessed upon the customer;
- 16 (2) The business serves in the capacity of a conduit or
17 agent of the department as a collector; and
- 18 (3) The moneys do not represent gross revenue or gross
19 proceeds.

20 As such, the fees were deemed exempt under the three-factor
21 test. Similarly, the same announcement stated that the newly



1 established fee to be collected by transportation companies for
2 the inspection, quarantine, and eradication of invasive species
3 contained in any freight would not be subject to the general
4 excise tax because the transportation company merely collected
5 the fee on behalf of the department of agriculture.

6 The legislature further finds that, despite longstanding
7 policy decisions and guidance provided by the department of
8 taxation, further clarification is necessary to unequivocally
9 provide that amounts received or accrued from certain fees and
10 charges related to shipping should continue to be exempt under
11 the general excise tax law.

12 It has long been recognized by the legislature that
13 exemptions relating to the transportation of cargo by ship are
14 warranted because the imposition of tax on the amounts received
15 or accrued for interstate shipping and related services would
16 have a substantial negative impact on the State's economy.
17 Increased shipping costs would ultimately be borne by consumers,
18 leading to the further escalation of the State's cost of living.
19 The legislature finds that this is unacceptable.

20 The purpose of this Act is to clarify that amounts received
21 or accrued for stevedoring services and related services,



1 wharfage, and demurrage are exempt under the general excise tax
2 law.

3 SECTION 2. Section 237-24.3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§237-24.3 Additional amounts not taxable.** In addition to
6 the amounts not taxable under section 237-24, this chapter shall
7 not apply to:

8 (1) Amounts received from the loading, transportation, and
9 unloading of agricultural commodities shipped for a
10 producer or produce dealer on one island of this State
11 to a person, firm, or organization on another island
12 of this State. The terms "agricultural commodity",
13 "producer", and "produce dealer" shall be defined in
14 the same manner as they are defined in section 147-1;
15 provided that agricultural commodities need not have
16 been produced in the State;

17 (2) Amounts received by the manager, submanager, or board
18 of directors of:

19 (A) An association of a condominium property regime
20 established in accordance with chapter 514B or
21 any predecessor thereto; or



- 1 (B) A nonprofit homeowners or community association
2 incorporated in accordance with chapter 414D or
3 any predecessor thereto and existing pursuant to
4 covenants running with the land,
5 in reimbursement of sums paid for common expenses;
- 6 (3) Amounts received or accrued from:
- 7 (A) The loading or unloading of cargo from ships,
8 barges, vessels, or aircraft, including
9 stevedoring services and related services, as
10 defined in section 382-1, whether or not the
11 ships, barges, vessels, or aircraft travel
12 between the State and other states or countries
13 or between the islands of the State;
- 14 (B) Tugboat services including pilotage fees
15 performed within the State, and the towage of
16 ships, barges, or vessels in and out of state
17 harbors, or from one pier to another; [~~and~~]
- 18 (C) The transportation of pilots or governmental
19 officials to ships, barges, or vessels offshore;
20 rigging gear; checking freight and similar



1 services; standby charges; and use of moorings
2 and running mooring lines; and
3 (D) Wharfage and demurrage imposed under chapter 266
4 that is paid to the department of transportation;
5 (4) Amounts received by an employee benefit plan by way of
6 contributions, dividends, interest, and other income;
7 and amounts received by a nonprofit organization or
8 office, as payments for costs and expenses incurred
9 for the administration of an employee benefit plan;
10 provided that this exemption shall not apply to any
11 gross rental income or gross rental proceeds received
12 after June 30, 1994, as income from investments in
13 real property in this State; and provided further that
14 gross rental income or gross rental proceeds from
15 investments in real property received by an employee
16 benefit plan after June 30, 1994, under written
17 contracts executed prior to July 1, 1994, shall not be
18 taxed until the contracts are renegotiated, renewed,
19 or extended, or until after December 31, 1998,
20 whichever is earlier. For the purposes of this
21 paragraph, "employee benefit plan" means any plan as



1 defined in title 29 United States Code section
2 1002(3), as amended;

3 (5) Amounts received for purchases made with United States
4 Department of Agriculture food coupons under the
5 federal food stamp program, and amounts received for
6 purchases made with United States Department of
7 Agriculture food vouchers under the Special
8 Supplemental Foods Program for Women, Infants and
9 Children;

10 (6) Amounts received by a hospital, infirmary, medical
11 clinic, health care facility, pharmacy, or a
12 practitioner licensed to administer the drug to an
13 individual for selling prescription drugs or
14 prosthetic devices to an individual; provided that
15 this paragraph shall not apply to any amounts received
16 for services provided in selling prescription drugs or
17 prosthetic devices. As used in this paragraph:

18 "Prescription drugs" are those drugs defined
19 under section 328-1 and dispensed by filling or
20 refilling a written or oral prescription by a
21 practitioner licensed under law to administer the drug



1 and sold by a licensed pharmacist under section 328-16
2 or practitioners licensed to administer drugs;
3 provided that "prescription drugs" shall not include
4 cannabis or manufactured cannabis products authorized
5 pursuant to chapters 329 and 329D; and

6 "Prosthetic device" means any artificial device
7 or appliance, instrument, apparatus, or contrivance,
8 including their components, parts, accessories, and
9 replacements thereof, used to replace a missing or
10 surgically removed part of the human body, which is
11 prescribed by a licensed practitioner of medicine,
12 osteopathy, or podiatry and that is sold by the
13 practitioner or that is dispensed and sold by a dealer
14 of prosthetic devices; provided that "prosthetic
15 device" shall not mean any auditory, ophthalmic,
16 dental, or ocular device or appliance, instrument,
17 apparatus, or contrivance;

- 18 (7) Taxes on transient accommodations imposed by chapter
19 237D and passed on and collected by operators holding
20 certificates of registration under that chapter;



1 (8) Amounts received as dues by an unincorporated
2 merchants association from its membership for
3 advertising media, promotional, and advertising costs
4 for the promotion of the association for the benefit
5 of its members as a whole and not for the benefit of
6 an individual member or group of members less than the
7 entire membership;

8 (9) Amounts received by a labor organization for real
9 property leased to:

10 (A) A labor organization; or

11 (B) A trust fund established by a labor organization
12 for the benefit of its members, families, and
13 dependents for medical or hospital care, pensions
14 on retirement or death of employees,
15 apprenticeship and training, and other membership
16 service programs.

17 As used in this paragraph, "labor organization" means
18 a labor organization exempt from federal income tax
19 under section 501(c)(5) of the Internal Revenue Code,
20 as amended;

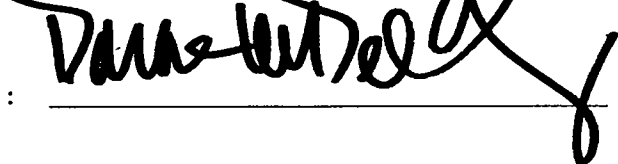


1 (10) Amounts received from foreign diplomats and consular
 2 officials who are holding cards issued or authorized
 3 by the United States Department of State granting them
 4 an exemption from state taxes; and

5 (11) Amounts received as rent for the rental or leasing of
 6 aircraft or aircraft engines used by the lessees or
 7 renters for interstate air transportation of
 8 passengers and goods. For purposes of this paragraph,
 9 payments made pursuant to a lease shall be considered
 10 rent regardless of whether the lease is an operating
 11 lease or a financing lease. The definition of
 12 "interstate air transportation" is the same as in
 13 49 U.S.C. section 40102."

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

16 SECTION 4. This Act shall take effect on July 1, 2022.

17 INTRODUCED BY: 



S.B. NO. 2475

Report Title:

General Excise Tax; Exemptions; Shipping Activities;
Stevedoring; Wharfage; Demurrage

Description:

Clarifies that amounts received or accrued for stevedoring services and related services, wharfage, and demurrage are exempt under the general excise tax law.

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

