
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.

17 The legislature finds that current state law already
18 recognizes that amounts received or accrued from certain broad



1 categories of shipping activities, such as loading and unloading
2 of cargo, transporting of pilots, rigging gear, checking freight
3 and similar services, and usage of moorings and running dock
4 lines, are exempt from the general excise tax.

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

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

18 As such, the fees were deemed exempt under the three-factor
19 test. Similarly, the same announcement stated that the newly
20 established fee to be collected by transportation companies for
21 the inspection, quarantine, and eradication of invasive species



1 contained in any freight would not be subject to the general
2 excise tax because the transportation company merely collected
3 the fee on behalf of the department of agriculture.

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

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

18 The purpose of this Act is to clarify that amounts received
19 or accrued for stevedoring services, wharfage, and demurrage
20 services are exempt under the general excise tax law.



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

3 "§237-24.3 Additional amounts not taxable. In addition to
4 the amounts not taxable under section 237-24, this chapter shall
5 not apply to:

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

15 (2) Amounts received by the manager, submanager, or board
16 of directors of:

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

20 (B) A nonprofit homeowners or community association
21 incorporated in accordance with chapter 414D or



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



1 (D) Wharfage and demurrage imposed under chapter 266
2 that is paid to the department of transportation;
3 (4) Amounts received by an employee benefit plan by way of
4 contributions, dividends, interest, and other income;
5 and amounts received by a nonprofit organization or
6 office, as payments for costs and expenses incurred
7 for the administration of an employee benefit plan;
8 provided that this exemption shall not apply to any
9 gross rental income or gross rental proceeds received
10 after June 30, 1994, as income from investments in
11 real property in this State; and provided further that
12 gross rental income or gross rental proceeds from
13 investments in real property received by an employee
14 benefit plan after June 30, 1994, under written
15 contracts executed prior to July 1, 1994, shall not be
16 taxed until the contracts are renegotiated, renewed,
17 or extended, or until after December 31, 1998,
18 whichever is earlier. For the purposes of this
19 paragraph, "employee benefit plan" means any plan as
20 defined in title 29 United States Code section
21 1002(3), as amended;



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

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

16 "Prescription drugs" are those drugs defined
17 under section 328-1 and dispensed by filling or
18 refilling a written or oral prescription by a
19 practitioner licensed under law to administer the drug
20 and sold by a licensed pharmacist under section 328-16
21 or practitioners licensed to administer drugs;



1 provided that "prescription drugs" shall not include
2 cannabis or manufactured cannabis products authorized
3 pursuant to chapters 329 and 329D; and

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

16 (7) Taxes on transient accommodations imposed by chapter
17 237D and passed on and collected by operators holding
18 certificates of registration under that chapter;

19 (8) Amounts received as dues by an unincorporated
20 merchants association from its membership for
21 advertising media, promotional, and advertising costs



1 for the promotion of the association for the benefit
2 of its members as a whole and not for the benefit of
3 an individual member or group of members less than the
4 entire membership;

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

7 (A) A labor organization; or

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

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

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



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

10 SECTION 3. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

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



Report Title:

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

Description:

Clarifies that amounts received or accrued for stevedoring services, wharfage, and demurrage services are exempt under the general excise tax law. (CD1)

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