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# 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 would have a substantial  
16 negative impact on the State's economy. Increased shipping  
17 costs would ultimately be borne by consumers, leading to the  
18 further escalation of the State's cost of living. The  
19 legislature finds that this is unacceptable.



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

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

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

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

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



- 1 (A) An association of a condominium property regime  
2 established in accordance with chapter 514B or  
3 any predecessor thereto; or
- 4 (B) A nonprofit homeowners or community association  
5 incorporated in accordance with chapter 414D or  
6 any predecessor thereto and existing pursuant to  
7 covenants running with the land,  
8 in reimbursement of sums paid for common expenses;
- 9 (3) Amounts received or accrued from:
- 10 (A) The loading or unloading of cargo from ships,  
11 barges, vessels, or aircraft, including  
12 stevedoring services and related services, as  
13 they are both defined in section 382-1, whether  
14 or not the ships, barges, vessels, or aircraft  
15 travel between the State and other states or  
16 countries or between the islands of the State;
- 17 (B) Tugboat services including pilotage fees  
18 performed within the State, and the towage of  
19 ships, barges, or vessels in and out of state  
20 harbors, or from one pier to another; [~~and~~]



1 (C) The transportation of pilots or governmental  
2 officials to ships, barges, or vessels offshore;  
3 rigging gear; checking freight and similar  
4 services; standby charges; and use of moorings  
5 and running mooring lines; and

6 (D) Wharfage and demurrage imposed under chapter 266  
7 that is paid to the department of transportation;

8 (4) Amounts received by an employee benefit plan by way of  
9 contributions, dividends, interest, and other income;  
10 and amounts received by a nonprofit organization or  
11 office, as payments for costs and expenses incurred  
12 for the administration of an employee benefit plan;  
13 provided that this exemption shall not apply to any  
14 gross rental income or gross rental proceeds received  
15 after June 30, 1994, as income from investments in  
16 real property in this State; and provided further that  
17 gross rental income or gross rental proceeds from  
18 investments in real property received by an employee  
19 benefit plan after June 30, 1994, under written  
20 contracts executed prior to July 1, 1994, shall not be  
21 taxed until the contracts are renegotiated, renewed,



1 or extended, or until after December 31, 1998,  
2 whichever is earlier. For the purposes of this  
3 paragraph, "employee benefit plan" means any plan as  
4 defined in title 29 United States Code section  
5 1002(3), as amended;

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

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



1           "Prescription drugs" are those drugs defined  
2           under section 328-1 and dispensed by filling or  
3           refilling a written or oral prescription by a  
4           practitioner licensed under law to administer the drug  
5           and sold by a licensed pharmacist under section 328-16  
6           or practitioners licensed to administer drugs;  
7           provided that "prescription drugs" shall not include  
8           cannabis or manufactured cannabis products authorized  
9           pursuant to chapters 329 and 329D; and

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





1 (7) Taxes on transient accommodations imposed by chapter  
2 237D and passed on and collected by operators holding  
3 certificates of registration under that chapter;

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

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

13 (A) A labor organization; or

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

20 As used in this paragraph, "labor organization" means  
21 a labor organization exempt from federal income tax



1 under section 501(c)(5) of the Internal Revenue Code,  
2 as amended;

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

7 (11) Amounts received as rent for the rental or leasing of  
8 aircraft or aircraft engines used by the lessees or  
9 renters for interstate air transportation of  
10 passengers and goods. For purposes of this paragraph,  
11 payments made pursuant to a lease shall be considered  
12 rent regardless of whether the lease is an operating  
13 lease or a financing lease. The definition of  
14 "interstate air transportation" is the same as in  
15 49 U.S.C. section 40102."

16 SECTION 3. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

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



S.B. NO. 2475  
S.D. 2  
H.D. 1

**Report Title:**

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

**Description:**

Clarifies that amounts received or accrued for stevedoring services, related services, wharfage, and demurrage services are exempt under the general excise tax law. (HD1)

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