
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 a healthy
2 interisland airline industry is vital to the state's economy.
3 Hawaii's interisland airlines continue to face severe financial
4 challenges. Fuel costs in particular have skyrocketed and grown
5 volatile in recent years. In fact, for most airlines, the cost
6 of fuel has surpassed labor as the highest operating cost
7 factor.

8 Sales of fuel sold from a foreign-trade zone for use by
9 airlines traveling out-of-the-state are exempt from general
10 excise and use taxes. However, interisland flights are not
11 exempt. To the extent that the Hawaii general excise and use
12 taxes are being applied to interisland flights, the Federal
13 Aviation Act, which includes interisland flights in the
14 definition of "interstate air transportation", is being
15 violated.

16 The legislature finds that exempting common carriers from
17 the general excise and use taxes for sales of fuel from a



1 foreign-trade zone for interisland flights would level the
2 playing field and create a fairer market for all airlines.

3 The purpose of this Act is to exempt common carriers from
4 the general excise and use taxes for fuel sold from a foreign-
5 trade zone to common carriers for use in interisland air
6 transportation.

7 SECTION 2. Chapter 237, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§237- Aviation fuel for air transportation. This
11 chapter shall not apply to amounts received from the sale of
12 aviation fuel, as defined in section 243-1, categorized as
13 privileged foreign merchandise, non-privileged foreign
14 merchandise, domestic merchandise, or zone-restricted
15 merchandise that is admitted into a foreign-trade zone and
16 purchased in a foreign-trade zone and is made directly to or is
17 used by a common carrier for consumption or use in air
18 transportation between two points in the State."

19 SECTION 3. Section 238-1, Hawaii Revised Statutes, is
20 amended by amending the definition of "use" to read as follows:

21 "Use" (and any nounal, verbal, adjectival, adverbial, and
22 other equivalent form of the term) herein used interchangeably



1 means any use, whether the use is of such nature as to cause the
2 property, services, or contracting to be appreciably consumed or
3 not, or the keeping of the property or services for such use or
4 for sale, the exercise of any right or power over tangible or
5 intangible personal property incident to the ownership of that
6 property, and shall include control over tangible or intangible
7 property by a seller who is licensed or who should be licensed
8 under chapter 237, who directs the importation of the property
9 into the State for sale and delivery to a purchaser in the
10 State, liability and free on board (FOB) to the contrary
11 notwithstanding, regardless of where title passes, but the term
12 "use" shall not include:

13 (1) Temporary use of property, not of a perishable or
14 quickly consumable nature, where the property is
15 imported into the State for temporary use (not sale)
16 therein by the person importing the same and is not
17 intended to be, and is not, kept permanently in the
18 State. For example, without limiting the generality
19 of the foregoing language:

20 (A) In the case of a contractor importing permanent
21 equipment for the performance of a construction
22 contract, with intent to remove, and who does



- 1 remove, the equipment out of the State upon
2 completing the contract;
- 3 (B) In the case of moving picture films imported for
4 use in theaters in the State with intent or under
5 contract to transport the same out of the State
6 after completion of such use; and
- 7 (C) In the case of a transient visitor importing an
8 automobile or other belongings into the State to
9 be used by the transient visitor while therein
10 but which are to be used and are removed upon the
11 transient visitor's departure from the State;
- 12 (2) Use by the taxpayer of property acquired by the
13 taxpayer solely by way of gift;
- 14 (3) Use which is limited to the receipt of articles and
15 the return thereof, to the person from whom acquired,
16 immediately or within a reasonable time either after
17 temporary trial or without trial;
- 18 (4) Use of goods imported into the State by the owner of a
19 vessel or vessels engaged in interstate or foreign
20 commerce and held for and used only as ship stores for
21 the vessels;



- 1 (5) The use or keeping for use of household goods,
2 personal effects, and private automobiles imported
3 into the State for nonbusiness use by a person who:
4 (A) Acquired them in another state, territory,
5 district, or country;
6 (B) At the time of the acquisition was a bona fide
7 resident of another state, territory, district,
8 or country;
9 (C) Acquired the property for use outside the State;
10 and
11 (D) Made actual and substantial use thereof outside
12 this State;
13 provided that as to an article acquired less than
14 three months prior to the time of its importation into
15 the State it shall be presumed, until and unless
16 clearly proved to the contrary, that it was acquired
17 for use in the State and that its use outside the
18 State was not actual and substantial;
- 19 (6) The leasing or renting of any aircraft or the keeping
20 of any aircraft solely for leasing or renting to
21 lessees or renters using the aircraft for commercial
22 transportation of passengers and goods or the



1 acquisition or importation of any such aircraft or
2 aircraft engines by any lessee or renter engaged in
3 interstate air transportation. For purposes of this
4 paragraph, "leasing" includes all forms of lease,
5 regardless of whether the lease is an operating lease
6 or financing lease. The definition of "interstate air
7 transportation" is the same as in [~~49 U.S.C. 40102,~~]
8 Title 49 United States Code section 40102;

9 (7) The use of oceangoing vehicles for passenger or
10 passenger and goods transportation from one point to
11 another within the State as a public utility as
12 defined in chapter 269;

13 (8) The use of material, parts, or tools imported or
14 purchased by a person licensed under chapter 237 which
15 are used for aircraft service and maintenance, or the
16 construction of an aircraft service and maintenance
17 facility as those terms are defined in section 237-
18 24.9;

19 (9) The use of services or contracting imported for resale
20 where the contracting or services are for resale,
21 consumption, or use outside the State pursuant to
22 section 237-29.53(a);



- 1 (10) The use of contracting imported or purchased by a
2 contractor as defined in section 237-6 who is:
3 (A) Licensed under chapter 237;
4 (B) Engaged in business as a contractor; and
5 (C) Subject to the tax imposed under section 238-2.3;
6 [and]
- 7 (11) The use of property, services, or contracting imported
8 by foreign diplomats and consular officials who are
9 holding cards issued or authorized by the United
10 States Department of State granting them an exemption
11 from state taxes[-]; and
- 12 (12) The use of aviation fuel, as defined in section 243-1,
13 categorized as privileged foreign merchandise, non-
14 privileged foreign merchandise, domestic merchandise,
15 or zone-restricted merchandise that is admitted into a
16 foreign-trade zone and is used by a common carrier by
17 air for consumption in air transportation between two
18 points in the State.

19 With regard to purchases made and distributed under the
20 authority of chapter 421, a cooperative association shall be
21 deemed the user thereof."



1 SECTION 4. This Act shall not be construed to imply that
2 any law prior to the effective date of this Act is inconsistent
3 with this Act.

4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect on July 1, 2008.



Report Title:

Taxes; Intrastate Aviation; Foreign Trade Zone; Exemption

Description:

Exempts common carriers from the general excise and use taxes for fuel sold from a foreign-trade zone to common carriers for use in interisland air transportation. (SD1)

