

JAN 25 2012

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Act 105, Session Laws of Hawaii 2011,
2 temporarily suspended certain exemptions from the general excise
3 tax for a period of two years, and these exemptions are
4 scheduled to sunset on June 30, 2013. One of the suspended
5 exemptions is for the general excise tax imposed on tangible
6 personal property that is sold by a person licensed under
7 chapter 237, Hawaii Revised Statutes, to the United States and
8 to any state-chartered credit union, pursuant to section 237-
9 25(a)(3), Hawaii Revised Statutes. The legislature finds that a
10 consequence of not providing the exemption is that Hawaii
11 businesses that sell tangible personal property to the federal
12 government must pay the general excise tax on those goods but
13 cannot pass the amount of the tax on to the federal government,
14 which in effect creates a financial burden for state businesses
15 and puts them at a disadvantage when competing with out-of-state
16 businesses.

17 Rather than crippling local businesses, the legislature
18 finds that Hawaii needs to promote the growth of local



1 businesses, including businesses that sell goods to the federal
2 government, which tends to make large purchases from local
3 vendors.

4 The purpose of this Act is to restore the general excise
5 tax exemption for sales of tangible personal property to the
6 United States and state-chartered credit unions, pursuant to
7 section 237-25(a)(3), and to clarify the exemption under
8 existing law to facilitate greater use of the exemption.

9 SECTION 2. Act 105, Session Laws of Hawaii 2011, is
10 amended by amending section 2 to read as follows:

11 "SECTION 2. Chapter 237, Hawaii Revised Statutes, is
12 amended by adding two new sections to be appropriately
13 designated and to read as follows:

14 **"§237- Temporary suspension of exemption of certain**
15 **amounts; levy of tax.** (a) Notwithstanding any other law to the
16 contrary, the exemption of the following amounts from taxation
17 under this chapter shall be suspended from July 1, 2011, through
18 June 30, 2013:

19 (1) Amounts deducted from the gross income received by
20 contractors as described under section 237-13(3)(B);

21 (2) Reimbursements received by federal cost-plus
22 contractors for the costs of purchased materials,



- 1 plant, and equipment as described under section 237-
- 2 13(3)(C);
- 3 (3) Gross receipts of home service providers acting as
- 4 service carriers providing mobile telecommunications
- 5 services to other home service providers as described
- 6 under section 237-13(6)(D);
- 7 (4) Amounts deducted from the gross income of real
- 8 property lessees because of receipt from sublessees as
- 9 described under section 237-16.5;
- 10 (5) The value or gross income received by nonprofit
- 11 organizations from certain conventions, conferences,
- 12 trade show exhibits, or display spaces as described
- 13 under section 237-16.8;
- 14 (6) Amounts received by sugarcane producers as described
- 15 under section 237-24(14);
- 16 (7) Amounts received from the loading, transportation, and
- 17 unloading of agricultural commodities shipped
- 18 interisland as described under section 237-24.3(1);
- 19 (8) Amounts received from the sale of intoxicating liquor,
- 20 cigarettes and tobacco products, and agricultural,
- 21 meat, or fish products to persons or common carriers



1 engaged in interstate or foreign commerce as described
2 under section 237-24.3(2);

3 (9) Amounts received or accrued from the loading or
4 unloading of cargo as described under section 237-
5 24.3(4)(A);

6 (10) Amounts received or accrued from tugboat and towage
7 services as described under section 237-24.3(4)(B);

8 (11) Amounts received or accrued from the transportation of
9 pilots or government officials and other maritime-
10 related services as described under section 237-
11 24.3(4)(C);

12 (12) Amounts received by labor organizations for real
13 property leases as described under section 237-
14 24.3(10);

15 (13) Amounts received as rent for aircraft or aircraft
16 engines used for interstate air transportation as
17 described under section 237-24.3(12);

18 (14) Amounts received by exchanges and exchange members as
19 described under section 237-24.5;

20 (15) Amounts received as high technology research and
21 development grants under section 206M-15 as described
22 under section 237-24.7(10);



(16) Amounts received from the servicing and maintenance of aircraft or construction of aircraft service and maintenance facilities as described under section 237-24.9;

(17) Gross proceeds from the sale of the following:

(A) Intoxicating liquor to the United States (including any agency or instrumentality of the United States that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or 244D, but not including national banks) or any organization to which the sale is permitted by the proviso of "Class 3" of section 281-31 that is located on any Army, Navy, or Air Force reservation as described under section 237-25(a)(1); and

(B) Tobacco products and cigarettes to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of tax under chapter 238 or 245, but not including national banks) as described under section 237-25(a)(2); ~~and~~



1 ~~(C) "Other tangible personal property" to the United~~
2 ~~States (including any agency, instrumentality, or~~
3 ~~federal credit union thereof, but not including~~
4 ~~national banks) and any state chartered credit~~
5 ~~union as described under section 237-25(a)(3);]~~

6 (18) Amounts received by petroleum product refiners from
7 other refiners for further refining of petroleum
8 products as described under section 237-27;

9 (19) Gross proceeds received from the construction,
10 reconstruction, erection, operation, use, maintenance,
11 or furnishing of air pollution control facilities, as
12 described under section 237-27.5, that do not have
13 valid certificates of exemption on July 1, 2011;

14 (20) Gross proceeds received from shipbuilding and ship
15 repairs as described under section 237-28.1;

16 (21) Amounts received by telecommunications common carriers
17 from call center operators for interstate or foreign
18 telecommunications services as described under section
19 237-29.8;

20 (22) Gross proceeds received by qualified businesses in
21 enterprise zones, as described under section 209E-11,
22 that do not have valid certificates of qualification



1 from the department of business, economic development,
2 and tourism on July 1, 2011; and

3 (23) Gross proceeds received by contractors licensed under
4 chapter 444 for construction within enterprise zones
5 performed for qualified businesses within the
6 enterprise zones or businesses approved by the
7 department of business, economic development, and
8 tourism to enroll into the enterprise zone program, as
9 described under section 209E-11.

10 (b) Except as otherwise provided under subsection (f),
11 (g), or (h), there is levied, assessed, and collected annually
12 against a taxpayer receiving or deriving previously exempt gross
13 income or gross proceeds of sale from July 1, 2011, to June 30,
14 2013, a tax at the rate of four per cent on that previously
15 exempt gross income or gross proceeds of sale.

16 (c) As used in this section, "previously exempt gross
17 income or gross proceeds of sale" means the amount of the gross
18 income or gross proceeds of sale, the exemption for which is
19 suspended under subsection (a). The term also includes the
20 value received by a nonprofit organization from conventions,
21 conferences, trade show exhibits, and display spaces, the
22 exemption for which is suspended under subsection (a)(5).



1 (d) The taxpayer, against whom the tax is levied and
2 assessed under this section, shall be responsible for payment of
3 the tax to the director of taxation.

4 (e) Notwithstanding section 237-8.6, no county surcharge
5 shall be levied, assessed, or collected on any previously exempt
6 gross income or gross proceeds of sale that is subject to
7 taxation under subsection (b).

8 (f) This section shall not apply to gross income or gross
9 proceeds from binding written contracts entered into prior to
10 July 1, 2011, that do not permit the passing on of increased
11 rates of taxes.

12 (g) This section shall not apply to gross income or gross
13 proceeds from stevedoring services and related services, as
14 defined in section 382-1, furnished to a company by its wholly
15 owned subsidiary.

16 (h) The tax imposed under subsection (b) shall not apply
17 to any gross income or gross proceeds of sale that cannot
18 legally be so taxed under the Constitution or laws of the United
19 States, but only so long as, and only to the extent to which the
20 State is without power to impose the tax.



1 To the extent that any exemption, exclusion, or
2 apportionment is necessary to comply with the preceding
3 sentence, the director of taxation shall:

4 (1) Exempt or exclude the gross income or gross proceeds
5 of sale from the tax under subsection (b); or

6 (2) Apportion the gross income or gross proceeds of sale
7 derived within the State by persons engaged in
8 business both within and without the State to
9 determine the gross income or gross proceeds of sale
10 that is subject to taxation under this chapter for the
11 purposes of section 237-21.

12 (i) This chapter shall apply to the payment, collection,
13 enforcement, and appeal of the tax levied under this section.

14 The director of taxation may establish additional
15 requirements, procedures, and forms pursuant to rules adopted
16 under chapter 91, to effectuate this section.

17 **§237- Information reporting.** Beginning July 1, 2011,
18 the director of taxation shall require information reporting on
19 all exclusions or exemptions of all amounts, persons, or
20 transactions from this chapter, except for the following:

21 (1) Amounts received that are exempt under section 237-
22 24(1) through (7); and



1 (2) Any other amounts, persons, or transactions as
2 determined by the director to be in the best interest
3 of tax administration and made by official
4 pronouncement.""

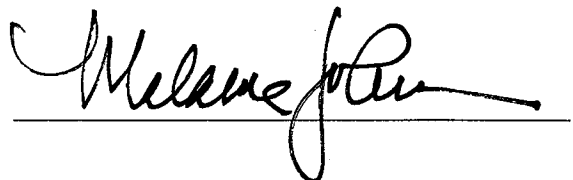
5 SECTION 3. Section 237-25, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) Nothing in this section shall be deemed to exempt any
8 person engaging or continuing in a service business or calling
9 from any part of the tax imposed upon the person for such
10 activity, and the person shall not be entitled to deduct any
11 amount for tangible personal property furnished in conjunction
12 therewith [~~even though~~] unless the person separately bills or
13 otherwise shows the amount of the gross income of the business
14 derived from the furnishing of the property."

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

17 SECTION 5. This Act shall take effect upon its approval;
18 provided that this Act shall apply to gross income or gross
19 proceeds received after June 30, 2012.

20
INTRODUCED BY:



S.B. NO. 3041

Report Title:

Taxation; General Excise Tax; Exemptions; Repeal

Description:

Repeals the temporary suspension under Act 105, SLH 2011, on the general excise tax exemption on sales of tangible personal property sold to the federal government and state-chartered credit unions. Authorizes a general excise tax exemption for service business or calling income and a deduction for tangible personal property furnished in conjunction with engaging in or continuing in a service business or calling, if the person separately bills or otherwise shows the amount of the gross income of the business derived from the furnishing of the property.

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