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# A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAX WHOLESALE RATE IMPOSED UPON SALE  
OF TANGIBLE PERSONAL PROPERTY.

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

1           SECTION 1. Section 3 of Act 135, Session Laws of Hawaii  
2 2003, inadvertently repealed the one-half of one per cent  
3 general excise tax rate imposed upon the wholesale sale of  
4 tangible personal property. The purpose of this Act is to undo  
5 the inadvertent repeal to clarify that the proper general excise  
6 tax rate imposed upon the wholesale sale of tangible personal  
7 property is one-half of one per cent.

8           SECTION 2. Section 237-13, Hawaii Revised Statutes, is  
9 amended to read as follows:

10           "**§237-13 Imposition of tax.** There is hereby levied and  
11 shall be assessed and collected annually privilege taxes against  
12 persons on account of their business and other activities in the  
13 State measured by the application of rates against values of  
14 products, gross proceeds of sales, or gross income, whichever is  
15 specified, as follows:

16           (1) Tax on manufacturers.



- 1 (A) Upon every person engaging or continuing within  
2 the State in the business of manufacturing,  
3 including compounding, canning, preserving,  
4 packing, printing, publishing, milling,  
5 processing, refining, or preparing for sale,  
6 profit, or commercial use, either directly or  
7 through the activity of others, in whole or in  
8 part, any article or articles, substance or  
9 substances, commodity or commodities, the amount  
10 of the tax to be equal to the value of the  
11 articles, substances, or commodities,  
12 manufactured, compounded, canned, preserved,  
13 packed, printed, milled, processed, refined, or  
14 prepared for sale, as shown by the gross proceeds  
15 derived from the sale thereof by the manufacturer  
16 or person compounding, preparing, or printing  
17 them, multiplied by one-half of one per cent.
- 18 (B) The measure of the tax on manufacturers is the  
19 value of the entire product for sale, regardless  
20 of the place of sale or the fact that deliveries  
21 may be made to points outside the State.



1 (C) If any person liable for the tax on manufacturers  
2 ships or transports the person's product, or any  
3 part thereof, out of the State, whether in a  
4 finished or unfinished condition, or sells the  
5 same for delivery to points outside the State  
6 (for example, consigned to a mainland purchaser  
7 via common carrier f.o.b. Honolulu), the value of  
8 the products in the condition or form in which  
9 they exist immediately before entering interstate  
10 or foreign commerce, determined as hereinafter  
11 provided, shall be the basis for the assessment  
12 of the tax imposed by this paragraph. This tax  
13 shall be due and payable as of the date of entry  
14 of the products into interstate or foreign  
15 commerce, whether the products are then sold or  
16 not. The department shall determine the basis  
17 for assessment, as provided by this paragraph, as  
18 follows:

- 19 (i) If the products at the time of their entry  
20 into interstate or foreign commerce already  
21 have been sold, the gross proceeds of sale,  
22 less the transportation expenses, if any,



1           incurred in realizing the gross proceeds for  
2           transportation from the time of entry of the  
3           products into interstate or foreign  
4           commerce, including insurance and storage in  
5           transit, shall be the measure of the value  
6           of the products;

7           (ii) If the products have not been sold at the  
8           time of their entry into interstate or  
9           foreign commerce, and in cases governed by  
10          clause (i) in which the products are sold  
11          under circumstances such that the gross  
12          proceeds of sale are not indicative of the  
13          true value of the products, the value of the  
14          products constituting the basis for  
15          assessment shall correspond as nearly as  
16          possible to the gross proceeds of sales for  
17          delivery outside the State, adjusted as  
18          provided in clause (i), or if sufficient  
19          data are not available, sales in the State,  
20          of similar products of like quality and  
21          character and in similar quantities, made by  
22          the taxpayer (unless not indicative of the



1 true value) or by others. Sales outside the  
2 State, adjusted as provided in clause (i),  
3 may be considered when they constitute the  
4 best available data. The department shall  
5 prescribe uniform and equitable rules for  
6 ascertaining the values;

7 (iii) At the election of the taxpayer and with the  
8 approval of the department, the taxpayer may  
9 make the taxpayer's returns under clause (i)  
10 even though the products have not been sold  
11 at the time of their entry into interstate  
12 or foreign commerce; and

13 (iv) In all cases in which products leave the  
14 State in an unfinished condition, the basis  
15 for assessment shall be adjusted so as to  
16 deduct the portion of the value as is  
17 attributable to the finishing of the goods  
18 outside the State.

19 (2) Tax on business of selling tangible personal property;  
20 producing.

21 (A) Upon every person engaging or continuing in the  
22 business of selling any tangible personal



1 property whatsoever (not including, however,  
2 bonds or other evidence of indebtedness, or  
3 stocks), there is likewise hereby levied, and  
4 shall be assessed and collected, a tax equivalent  
5 to four per cent of the gross proceeds of sales  
6 of the business; provided that, in the case of a  
7 wholesaler, the tax shall be equal to one-half of  
8 one per cent of the gross proceeds of sales of  
9 the business; and provided further that insofar  
10 as the sale of tangible personal property is a  
11 wholesale sale under section [‡]237-4(a)(8)[‡],  
12 the sale shall be subject to section 237-13.3.  
13 Upon every person engaging or continuing within  
14 this State in the business of a producer, the tax  
15 shall be equal to one-half of one per cent of the  
16 gross proceeds of sales of the business, or the  
17 value of the products, for sale, if sold for  
18 delivery outside the State or shipped or  
19 transported out of the State, and the value of  
20 the products shall be determined in the same  
21 manner as the value of manufactured products  
22 covered in the cases under paragraph (1)(C).



1 (B) Gross proceeds of sales of tangible property in  
2 interstate and foreign commerce shall constitute  
3 a part of the measure of the tax imposed on  
4 persons in the business of selling tangible  
5 personal property, to the extent, under the  
6 conditions, and in accordance with the provisions  
7 of the Constitution of the United States and the  
8 Acts of the Congress of the United States which  
9 may be now in force or may be hereafter adopted,  
10 and whenever there occurs in the State an  
11 activity to which, under the Constitution and  
12 Acts of Congress, there may be attributed gross  
13 proceeds of sales, the gross proceeds shall be so  
14 attributed.

15 (C) No manufacturer or producer, engaged in such  
16 business in the State and selling the  
17 manufacturer's or producer's products for  
18 delivery outside of the State (for example,  
19 consigned to a mainland purchaser via common  
20 carrier f.o.b. Honolulu), shall be required to  
21 pay the tax imposed in this chapter for the  
22 privilege of so selling the products, and the



1 value or gross proceeds of sales of the products  
2 shall be included only in determining the measure  
3 of the tax imposed upon the manufacturer or  
4 producer.

5 (D) When a manufacturer or producer, engaged in such  
6 business in the State, also is engaged in selling  
7 the manufacturer's or producer's products in the  
8 State at wholesale, retail, or in any other  
9 manner, the tax for the privilege of engaging in  
10 the business of selling the products in the State  
11 shall apply to the manufacturer or producer as  
12 well as the tax for the privilege of  
13 manufacturing or producing in the State, and the  
14 manufacturer or producer shall make the returns  
15 of the gross proceeds of the wholesale, retail,  
16 or other sales required for the privilege of  
17 selling in the State, as well as making the  
18 returns of the value or gross proceeds of sales  
19 of the products required for the privilege of  
20 manufacturing or producing in the State. The  
21 manufacturer or producer shall pay the tax  
22 imposed in this chapter for the privilege of



1 selling its products in the State, and the value  
2 or gross proceeds of sales of the products, thus  
3 subjected to tax, may be deducted insofar as  
4 duplicated as to the same products by the measure  
5 of the tax upon the manufacturer or producer for  
6 the privilege of manufacturing or producing in  
7 the State; provided that no producer of  
8 agricultural products who sells the products to a  
9 purchaser who will process the products outside  
10 the State shall be required to pay the tax  
11 imposed in this chapter for the privilege of  
12 producing or selling those products.

13 (E) A taxpayer selling to a federal cost-plus  
14 contractor may make the election provided for by  
15 paragraph (3)(C), and in that case the tax shall  
16 be computed pursuant to the election,  
17 notwithstanding this paragraph or paragraph (1)  
18 to the contrary.

19 (F) The department, by rule, may require that a  
20 seller take from the purchaser of tangible  
21 personal property a certificate, in a form



1 prescribed by the department, certifying that the  
2 sale is a sale at wholesale; provided that:

3 (i) Any purchaser who furnishes a certificate  
4 shall be obligated to pay to the seller,  
5 upon demand, the amount of the additional  
6 tax that is imposed upon the seller whenever  
7 the sale in fact is not at wholesale; and

8 (ii) The absence of a certificate in itself shall  
9 give rise to the presumption that the sale  
10 is not at wholesale unless the sales of the  
11 business are exclusively at wholesale.

12 (3) Tax upon contractors.

13 (A) Upon every person engaging or continuing within  
14 the State in the business of contracting, the tax  
15 shall be equal to four per cent of the gross  
16 income of the business.

17 (B) In computing the tax levied under this paragraph,  
18 there shall be deducted from the gross income of  
19 the taxpayer so much thereof as has been included  
20 in the measure of the tax levied under  
21 subparagraph (A), on:



- 1 (i) Another taxpayer who is a contractor, as
- 2 defined in section 237-6;
- 3 (ii) A specialty contractor, duly licensed by the
- 4 department of commerce and consumer affairs
- 5 pursuant to section 444-9, in respect of the
- 6 specialty contractor's business; or
- 7 (iii) A specialty contractor who is not licensed
- 8 by the department of commerce and consumer
- 9 affairs pursuant to section 444-9, but who
- 10 performs contracting activities on federal
- 11 military installations and nowhere else in
- 12 this State;
- 13 provided that any person claiming a deduction
- 14 under this paragraph shall be required to show in
- 15 the person's return the name and general excise
- 16 number of the person paying the tax on the amount
- 17 deducted by the person.
- 18 (C) In computing the tax levied under this paragraph
- 19 against any federal cost-plus contractor, there
- 20 shall be excluded from the gross income of the
- 21 contractor so much thereof as fulfills the
- 22 following requirements:



1 (i) The gross income exempted shall constitute  
2 reimbursement of costs incurred for  
3 materials, plant, or equipment purchased  
4 from a taxpayer licensed under this chapter,  
5 not exceeding the gross proceeds of sale of  
6 the taxpayer on account of the transaction;  
7 and

8 (ii) The taxpayer making the sale shall have  
9 certified to the department that the  
10 taxpayer is taxable with respect to the  
11 gross proceeds of the sale, and that the  
12 taxpayer elects to have the tax on gross  
13 income computed the same as upon a sale to  
14 the state government.

15 (D) A person who, as a business or as a part of a  
16 business in which the person is engaged, erects,  
17 constructs, or improves any building or  
18 structure, of any kind or description, or makes,  
19 constructs, or improves any road, street,  
20 sidewalk, sewer, or water system, or other  
21 improvements on land held by the person (whether  
22 held as a leasehold, fee simple, or otherwise),



1           upon the sale or other disposition of the land or  
2           improvements, even if the work was not done  
3           pursuant to a contract, shall be liable to the  
4           same tax as if engaged in the business of  
5           contracting, unless the person shows that at the  
6           time the person was engaged in making the  
7           improvements the person intended, and for the  
8           period of at least one year after completion of  
9           the building, structure, or other improvements  
10          the person continued to intend to hold and not  
11          sell or otherwise dispose of the land or  
12          improvements. The tax in respect of the  
13          improvements shall be measured by the amount of  
14          the proceeds of the sale or other disposition  
15          that is attributable to the erection,  
16          construction, or improvement of such building or  
17          structure, or the making, constructing, or  
18          improving of the road, street, sidewalk, sewer,  
19          or water system, or other improvements. The  
20          measure of tax in respect of the improvements  
21          shall not exceed the amount which would have been  
22          taxable had the work been performed by another,



1 subject as in other cases to the deductions  
2 allowed by subparagraph (B). Upon the election  
3 of the taxpayer, this paragraph may be applied  
4 notwithstanding that the improvements were not  
5 made by the taxpayer, or were not made as a  
6 business or as a part of a business, or were made  
7 with the intention of holding the same. However,  
8 this paragraph shall not apply in respect of any  
9 proceeds that constitute or are in the nature of  
10 rent; all such gross income shall be taxable  
11 under paragraph (9); provided that insofar as the  
12 business of renting or leasing real property  
13 under a lease is taxed under section 237-16.5,  
14 the tax shall be levied by section 237-16.5.

15 (4) Tax upon theaters, amusements, radio broadcasting  
16 stations, etc.

17 (A) Upon every person engaging or continuing within  
18 the State in the business of operating a theater,  
19 opera house, moving picture show, vaudeville,  
20 amusement park, dance hall, skating rink, radio  
21 broadcasting station, or any other place at which  
22 amusements are offered to the public, the tax



1 shall be equal to four per cent of the gross  
2 income of the business, and in the case of a sale  
3 of an amusement at wholesale under section 237-  
4 4(a)(13), the tax shall be subject to section  
5 237-13.3.

6 (B) The department may require that the person  
7 rendering an amusement at wholesale take from the  
8 licensed seller a certificate, in a form  
9 prescribed by the department, certifying that the  
10 sale is a sale at wholesale; provided that:

11 (i) Any licensed seller who furnishes a  
12 certificate shall be obligated to pay to the  
13 person rendering the amusement, upon demand,  
14 the amount of additional tax that is imposed  
15 upon the seller whenever the sale is not at  
16 wholesale; and

17 (ii) The absence of a certificate in itself shall  
18 give rise to the presumption that the sale  
19 is not at wholesale unless the person  
20 rendering the sale is exclusively rendering  
21 the amusement at wholesale.



1 (5) Tax upon sales representatives, etc. Upon every  
2 person classified as a representative or purchasing  
3 agent under section 237-1, engaging or continuing  
4 within the State in the business of performing  
5 services for another, other than as an employee, there  
6 is likewise hereby levied and shall be assessed and  
7 collected a tax equal to four per cent of the  
8 commissions and other compensation attributable to the  
9 services so rendered by the person.

10 (6) Tax on service business.

11 (A) Upon every person engaging or continuing within  
12 the State in any service business or calling  
13 including professional services not otherwise  
14 specifically taxed under this chapter, there is  
15 likewise hereby levied and shall be assessed and  
16 collected a tax equal to four per cent of the  
17 gross income of the business, and in the case of  
18 a wholesaler under section 237-4(a)(10), the tax  
19 shall be equal to one-half of one per cent of the  
20 gross income of the business. Notwithstanding  
21 the foregoing, a wholesaler under section 237-  
22 4(a)(10) shall be subject to section 237-13.3.



1 (B) The department may require that the person  
2 rendering a service at wholesale take from the  
3 licensed seller a certificate, in a form  
4 prescribed by the department, certifying that the  
5 sale is a sale at wholesale; provided that:

6 (i) Any licensed seller who furnishes a  
7 certificate shall be obligated to pay to the  
8 person rendering the service, upon demand,  
9 the amount of additional tax that is imposed  
10 upon the seller whenever the sale is not at  
11 wholesale; and

12 (ii) The absence of a certificate in itself shall  
13 give rise to the presumption that the sale  
14 is not at wholesale unless the person  
15 rendering the sale is exclusively rendering  
16 services at wholesale.

17 (C) Where any person is engaged in the business of  
18 selling interstate or foreign common carrier  
19 telecommunication services within and without the  
20 State, other than as a home service provider, the  
21 tax shall be imposed on that portion of gross  
22 income received by a person from service which is



1           originated or terminated in this State and is  
2           charged to a telephone number, customer, or  
3           account in this State notwithstanding any other  
4           state law (except for the exemption under section  
5           237-23(a)(1)) to the contrary. If, under the  
6           Constitution and laws of the United States, the  
7           entire gross income as determined under this  
8           paragraph of a business selling interstate or  
9           foreign common carrier telecommunication services  
10          cannot be included in the measure of the tax, the  
11          gross income shall be apportioned as provided in  
12          section 237-21; provided that the apportionment  
13          factor and formula shall be the same for all  
14          persons providing those services in the State.

15          (D) Where any person is engaged in the business of a  
16          home service provider, the tax shall be imposed  
17          on the gross income received or derived from  
18          providing interstate or foreign mobile  
19          telecommunications services to a customer with a  
20          place of primary use in this State when such  
21          services originate in one state and terminate in  
22          another state, territory, or foreign country;



1 provided that all charges for mobile  
2 telecommunications services which are billed by  
3 or for the home service provider are deemed to be  
4 provided by the home service provider at the  
5 customer's place of primary use, regardless of  
6 where the mobile telecommunications originate,  
7 terminate, or pass through; provided further that  
8 the income from charges specifically derived from  
9 interstate or foreign mobile telecommunications  
10 services, as determined by books and records that  
11 are kept in the regular course of business by the  
12 home service provider in accordance with section  
13 239-24, shall be apportioned under any  
14 apportionment factor or formula adopted under  
15 subparagraph (C). Gross income shall not  
16 include:

17 (i) Gross receipts from mobile  
18 telecommunications services provided to a  
19 customer with a place of primary use outside  
20 this State;



1           (ii) Gross receipts from mobile  
2                   telecommunications services that are subject  
3                   to the tax imposed by chapter 239;

4           (iii) Gross receipts from mobile  
5                   telecommunications services taxed under  
6                   section 237-13.8; and

7           (iv) Gross receipts of a home service provider  
8                   acting as a serving carrier providing mobile  
9                   telecommunications services to another home  
10                  service provider's customer.

11           For the purposes of this paragraph, "charges for  
12                  mobile telecommunications services", "customer",  
13                  "home service provider", "mobile  
14                  telecommunications services", "place of primary  
15                  use", and "serving carrier" have the same meaning  
16                  as in section 239-22.

17           (7) Tax on insurance producers. Upon every person engaged  
18                  as a licensed producer pursuant to chapter 431, there  
19                  is hereby levied and shall be assessed and collected a  
20                  tax equal to 0.15 per cent of the commissions due to  
21                  that activity.



- 1           (8) Tax on receipts of sugar benefit payments. Upon the  
2           amounts received from the United States government by  
3           any producer of sugar (or the producer's legal  
4           representative or heirs), as defined under and by  
5           virtue of the Sugar Act of 1948, as amended, or other  
6           Acts of the Congress of the United States relating  
7           thereto, there is hereby levied a tax of one-half of  
8           one per cent of the gross amount received; provided  
9           that the tax levied hereunder on any amount so  
10          received and actually disbursed to another by a  
11          producer in the form of a benefit payment shall be  
12          paid by the person or persons to whom the amount is  
13          actually disbursed, and the producer actually making a  
14          benefit payment to another shall be entitled to claim  
15          on the producer's return a deduction from the gross  
16          amount taxable hereunder in the sum of the amount so  
17          disbursed. The amounts taxed under this paragraph  
18          shall not be taxable under any other paragraph,  
19          subsection, or section of this chapter.
- 20          (9) Tax on other business. Upon every person engaging or  
21          continuing within the State in any business, trade,  
22          activity, occupation, or calling not included in the



1 preceding paragraphs or any other provisions of this  
2 chapter, there is likewise hereby levied and shall be  
3 assessed and collected, a tax equal to four per cent  
4 of the gross income thereof. In addition, the rate  
5 prescribed by this paragraph shall apply to a business  
6 taxable under one or more of the preceding paragraphs  
7 or other provisions of this chapter, as to any gross  
8 income thereof not taxed thereunder as gross income or  
9 gross proceeds of sales or by taxing an equivalent  
10 value of products, unless specifically exempted."

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

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



**Report Title:**

General Excise Tax; Wholesale Rate Imposed Upon Sale of Tangible Personal Property

**Description:**

Clarifies that wholesale sales of tangible personal property are subject to the one-half of one per cent general excise tax rate. (SD1)

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

