

JAN 23 2015

S.B. NO. 259

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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 purpose of this Act is to adopt changes to  
2   Hawaii's tax law that will allow Hawaii to participate in the  
3   national streamlined sales and use tax agreement. This  
4   agreement simplifies state tax systems, removes burdens to  
5   interstate commerce that are defined in the United States  
6   Supreme Court decision in *Quill Corp. v. North Dakota*, 504 U.S.  
7   298 (1992), and "levels the playing field" between local and  
8   out-of-state retailers. At its core, the Streamlined Sales Tax  
9   Project uses technology to accurately identify tax rates,  
10   collect taxes, and remit state tax revenues. Since 2005,  
11   out-of-state retailers have voluntarily collected and remitted  
12   over \$350,000,000 in taxes to participating states that would  
13   have otherwise likely gone uncollected by the states.

14           Hawaii's use tax, chapter 238, Hawaii Revised Statutes, has  
15   been on the books for over forty years and is similar to use tax  
16   laws in forty-five other states. Most Hawaii consumers do not  
17   realize that they owe the State a 4 per cent tax on their out-



1 of-state purchases via catalog, direct mail, or the Internet,  
2 and it is virtually impossible for the department of taxation to  
3 calculate and collect what individual taxpayers owe on those  
4 purchases.

5 In 2003, the State of Hawaii became a participant in the  
6 national Streamlined Sales Tax Project by enacting the Hawaii  
7 Simplified Sales and Use Tax Administration Act (Act 173,  
8 Session Laws of Hawaii 2003).

9 In 2005, to advance the State's efforts to comply with the  
10 terms and conditions of the conforming legislation reflected in  
11 the Streamlined Sales Tax Project's model agreement and act, the  
12 legislature enacted Act 3, Special Session Laws of Hawaii 2005.  
13 Act 3 also established a technical advisory group to assist the  
14 department of taxation in identifying and resolving issues  
15 necessary for Streamlined Sales Tax Project compliance. A joint  
16 house-senate legislative oversight committee was formed to  
17 provide additional tax policy support and guidance.

18 During the 2006-2008 legislative sessions, legislation was  
19 introduced to implement conforming amendments to Hawaii's tax  
20 laws to implement the streamlined sales and use tax agreement in  
21 Hawaii. In 2009, the legislature adopted streamlined sales and



1 use tax legislation that was subsequently vetoed by the  
2 administration (Governor's Message 835, July 15, 2009). The  
3 2010 legislation was a culmination of prior efforts to adopt  
4 conforming legislation for the State to participate in and  
5 become a full member of the Streamlined Sales Tax Project. This  
6 Act will finally allow the State to begin collecting more of the  
7 use taxes that are legally required to be collected under  
8 chapter 238, Hawaii Revised Statutes, but are presently going  
9 uncollected on the majority of out-of-state purchases.

10 To participate and become a full member in the streamlined  
11 sales and use tax agreement, Hawaii must amend its tax law to be  
12 in conformity with the streamlined sales and use tax agreement.  
13 The State must also adopt a single rate of general excise tax,  
14 Hawaii's substitute for a sales tax, to conform to the  
15 streamlined sales and use tax agreement. In accordance with  
16 advice received from the Streamlined Sales Tax Governing Board  
17 and COST, a national organization representing businesses, this  
18 was accomplished by:

- 19 (1) Moving the 0.5 per cent tax rate for wholesale  
20 transactions to a new chapter;



(2) Adding a new chapter on the taxation of imports of property, services, and contracting;

(3) Moving the 0.15 per cent tax on insurance producers to a new chapter; and

(4) Eliminating the tax on businesses owned by disabled persons.

This Act also provides for destination-based sourcing and amnesty.

The contents of this Act are updated to reflect the Streamlined Sales Tax Governing Board's amendments to the streamlined sales and use tax agreement through 2009. The State of Hawaii would benefit tremendously by adopting legislation that would enable the State to be in compliance with the streamlined sales and use tax agreement at the same time that federal legislation is being re-introduced in 2015.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER A

## TAX ON WHOLESALERS, SERVICE BUSINESSES, AND CONTRACTORS



1       **SA-1 Definitions.** "Department" means the department of  
2       taxation.

3       The definitions contained in sections 237-1, 237-2, and  
4       237-3 shall apply to this chapter.

5       **SA-2 "Wholesaler" and "jobber" defined.** (a) "Wholesaler"  
6       or "jobber" applies only to a person making sales at wholesale.  
7       Only the following are sales at wholesale:

8           (1) Sales to a licensed retail merchant, jobber, or other  
9           licensed seller for purposes of resale;

10          (2) Sales to a licensed manufacturer of materials or  
11          commodities that are to be incorporated by the  
12          manufacturer into a finished or saleable product  
13          (including the container or package in which the  
14          product is contained) during the course of its  
15          preservation, manufacture, or processing, including  
16          preparation for market, and that will remain in a  
17          finished or saleable product in a form as to be  
18          perceptible to the senses, the finished or saleable  
19          product is to be sold and not otherwise used by the  
20          manufacturer;



- 1           (3) Sales to a licensed producer or cooperative  
2           association of materials or commodities that are to be  
3           incorporated by the producer or by the cooperative  
4           association into a finished or saleable product that  
5           is to be sold and not otherwise used by the producer  
6           or cooperative association, including specifically  
7           materials or commodities expended as essential to the  
8           planting, growth, nurturing, and production of  
9           commodities that are sold by the producer or by the  
10          cooperative association;
- 11          (4) Sales to a licensed contractor of materials or  
12          commodities that are to be incorporated by the  
13          contractor into the finished work or project required  
14          by the contract and that will remain in a finished  
15          work or project in a form as to be perceptible to the  
16          senses;
- 17          (5) Sales to a licensed producer, or to a cooperative  
18          association described in section 237-23(a)(7) for sale  
19          to a licensed producer, or to a licensed person  
20          operating a feed lot, of poultry or animal feed,  
21          hatching eggs, semen, replacement stock, breeding



1 services for the purpose of raising or producing  
2 animal or poultry products for disposition as  
3 described in section A-3 or for incorporation into a  
4 manufactured product as described in paragraph (2) or  
5 for the purpose of breeding, hatching, milking, or egg  
6 laying other than for the customer's own consumption  
7 of the meat, poultry, eggs, or milk so produced;  
8 provided that in the case of a feed lot operator, only  
9 the segregated cost of the feed furnished by the feed  
10 lot operator as part of the feed lot operator's  
11 service to a licensed producer of poultry or animals  
12 to be butchered or to a cooperative association  
13 described in section 237-23(a)(7) of these licensed  
14 producers shall be deemed to be a sale at wholesale;  
15 and provided further that any amount derived from the  
16 furnishing of feed lot services, other than the  
17 segregated cost of feed, shall be deemed taxable at  
18 the service business rate specified in section  
19 A-6(a)(4). This paragraph shall not apply to the sale  
20 of feed for poultry or animals to be used for hauling,  
21 transportation, or sports purposes;



1           (6) Sales to a licensed producer, or to a cooperative  
2           association described in section 237-23(a)(7) for sale  
3           to the producer, of seed or seedstock for producing  
4           agricultural and aquacultural products, or bait for  
5           catching fish (including the catching of bait for  
6           catching fish), the agricultural and aquacultural  
7           products or fish are to be disposed of as described in  
8           section A-3 or to be incorporated in a manufactured  
9           product as described in paragraph (2);

10          (7) Sales to a licensed producer, or to a cooperative  
11          association described in section 237-23(a)(7) for sale  
12          to a licensed producer; of polypropylene shade cloth;  
13          of polyfilm; of polyethylene film; of cartons and  
14          other containers, wrappers, and sacks, and binders to  
15          be used for packaging eggs, vegetables, fruits, and  
16          other agricultural and aquacultural products; of  
17          seedlings and cuttings for producing nursery plants or  
18          aquacultural products; or of chick containers; the  
19          cartons and other containers, wrappers, and sacks,  
20          binders, seedlings, cuttings, and containers are to be  
21          used as described in section A-3, or to be





1 incorporated in a manufactured product as described in  
2 paragraph (2);

3 (8) Sales of tangible personal property where:

4 (A) Tangible personal property is sold upon the order  
5 or request of a licensed seller for the purpose  
6 of rendering a service in the course of the  
7 person's service business or calling, or upon the  
8 order or request of a person subject to tax under  
9 section 237D-2 for the purpose of furnishing  
10 transient accommodations;

11 (B) The tangible personal property becomes or is used  
12 as an identifiable element of the service  
13 rendered; and

14 (C) The cost of the tangible personal property does  
15 not constitute overhead to the licensed seller;

16 (9) Sales to a licensed leasing company of capital goods  
17 that have a depreciable life, are purchased by the  
18 leasing company for lease to its customers, and are  
19 thereafter leased as a service to others;

20 (10) Sales of services to a licensed seller engaging in a  
21 business or calling whenever:



1 (A) Either:

2 (i) In the context of a service-to-service  
3 transaction, a service is rendered upon the  
4 order or request of a licensed seller for  
5 the purpose of rendering another service in  
6 the course of the seller's service business  
7 or calling;

8 (ii) In the context of a service-to-tangible  
9 personal property transaction, a service is  
10 rendered upon the order or request of a  
11 licensed seller for the purpose of  
12 manufacturing, producing, or preparing  
13 tangible personal property to be sold;

14 (iii) In the context of a service-to-contracting  
15 transaction, a service is rendered upon the  
16 order or request of a licensed contractor as  
17 defined in section 237-6 for the purpose of  
18 assisting that licensed contractor; or

19 (iv) In the context of a service-to-transient  
20 accommodations rental transaction, a service  
21 is rendered upon the order or request of a



1 person subject to tax under section 237D-2  
2 for the purpose of furnishing transient  
3 accommodations;

4 (B) The benefit of the service passes to the customer  
5 of the licensed seller, licensed contractor, or  
6 person furnishing transient accommodations as an  
7 identifiable element of the other service or  
8 property to be sold, the contracting, or the  
9 furnishing of transient accommodations;

10 (C) The cost of the service does not constitute  
11 overhead to the licensed seller, licensed  
12 contractor, or person furnishing transient  
13 accommodations;

14 (D) The gross income of the licensed seller is not  
15 divided between the licensed seller and another  
16 licensed seller, contractor, or person furnishing  
17 transient accommodations for imposition of the  
18 tax under this chapter or chapter 237;

19 (E) The gross income of the licensed seller is not  
20 subject to a deduction under this chapter,  
21 chapter 237, or chapter 237D; and



1 (F) The resale of the service, tangible personal  
2 property, contracting, or transient  
3 accommodations is subject to the tax imposed  
4 under this chapter or chapter 237 at the highest  
5 rate;

6 (11) Sales to a licensed retail merchant, jobber, or other  
7 licensed seller of bulk condiments or prepackaged  
8 single-serving packets of condiments that are provided  
9 to customers by the licensed retail merchant, jobber,  
10 or other licensed seller;

11 (12) Sales to a licensed retail merchant, jobber, or other  
12 licensed seller of tangible personal property that  
13 will be incorporated or processed by the licensed  
14 retail merchant, jobber, or other licensed seller into  
15 a finished or saleable product during the course of  
16 its preparation for market (including disposable,  
17 nonreturnable containers, packages, or wrappers, in  
18 which the product is contained and that are generally  
19 known and most commonly used to contain food or  
20 beverage for transfer or delivery), and the finished  
21 or saleable product is to be sold and not otherwise



used by the licensed retail merchant, jobber, or other  
licensed seller;

(13) Sales of amusements subject to taxation under section  
A-6(a)(3) to a licensed seller engaging in a business  
or calling whenever:

(A) Either:

(i) In the context of an amusement-to-service  
transaction, an amusement is rendered upon  
the order or request of a licensed seller  
for the purpose of rendering another service  
in the course of the seller's service  
business or calling;

(ii) In the context of an amusement-to-tangible  
personal property transaction, an amusement  
is rendered upon the order or request of a  
licensed seller for the purpose of selling  
tangible personal property; or

(iii) In the context of an amusement-to-amusement  
transaction, an amusement is rendered upon  
the order or request of a licensed seller  
for the purpose of rendering another



1                   amusement in the course of the person's  
2                   amusement business;

3           (B)   The benefit of the amusement passes to the  
4               customer of the licensed seller as an  
5               identifiable element of the other service,  
6               tangible personal property to be sold, or  
7               amusement;

8           (C)   The cost of the amusement does not constitute  
9               overhead to the licensed seller;

10          (D)   The gross income of the licensed seller is not  
11               divided between the licensed seller and another  
12               licensed seller, person furnishing transient  
13               accommodations, or person rendering an amusement  
14               for imposition of the tax under chapter 237;

15          (E)   The gross income of the licensed seller is not  
16               subject to a deduction under this chapter or  
17               chapter 237; and

18          (F)   The resale of the service, tangible personal  
19               property, or amusement is subject to the tax  
20               imposed under this chapter or chapter 237.



1 As used in this paragraph, "amusement" means  
2 entertainment provided as part of a show for which  
3 there is an admission charge; and

4 (14) Sales by a printer to a publisher of magazines or  
5 similar printed materials containing advertisements,  
6 when the publisher is under contract with the  
7 advertisers to distribute a minimum number of  
8 magazines or similar printed materials to the public  
9 or defined segment of the public, whether or not there  
10 is a charge to the persons who actually receive the  
11 magazines or similar printed materials.

12 (b) If the use tax law under chapter B is finally held by  
13 a court of competent jurisdiction to be unconstitutional or  
14 invalid insofar as it purports to tax the use or consumption of  
15 tangible personal property imported into the State in interstate  
16 or foreign commerce, or both, wholesalers and jobbers shall be  
17 taxed thereafter under this chapter in accordance with the  
18 following definition (that shall supersede the definitions for  
19 "wholesaler" or "jobber" in subsection (a)): "Wholesaler" or  
20 "jobber" means a person, or an organized division thereof,  
21 definitely organized to render and rendering a general



1 distribution service that buys and maintains at the person's  
2 place of business a stock or lines of merchandise that the  
3 person distributes; and that the person, through salespersons,  
4 advertising, or sales promotion devices, sells to licensed  
5 retailers, to institutional, or licensed commercial or  
6 industrial users, in wholesale quantities and at wholesale  
7 rates. A corporation deemed not to be carrying on a trade or  
8 business in this State under section 235-6 shall nevertheless be  
9 deemed to be a wholesaler and shall be subject to the tax  
10 imposed by this chapter.

11       **§A-3 "Producer" defined.** (a) "Producer" means any person  
12 engaged in the business of raising and producing agricultural  
13 products in their natural state, or in producing natural  
14 resource products, or engaged in the business of fishing or  
15 aquaculture, for sale, or for shipment or transportation out of  
16 the State, of the agricultural or aquaculture products in their  
17 natural or processed state, or butchered and dressed, or the  
18 natural resource products, or fish.

19       (b) As used in this section, "agricultural products"  
20 include floricultural, horticultural, viticultural, forestry,





1 nut, coffee, dairy, livestock, poultry, bee, animal, and any  
2 other farm, agronomic, or plantation products.

3       **§A-4 Definitions; "contractor", "service business or**  
4 **calling"**. The definitions contained in sections 237-6 and 237-7  
5 shall be applicable for this chapter.

6       **§A-5 Licensing; tax year.** Sections 237-9, 237-9.5,  
7 237-11, and 237-12 shall be applicable for this chapter.

8       **§A-6 Imposition of tax.** (a) There is hereby levied and  
9 shall be assessed and collected annually privilege taxes against  
10 persons on account of their business and other activities in the  
11 State measured by the application of rates against values of  
12 products, gross proceeds of sales, or gross income, whichever is  
13 specified, as follows:

14       (1) Tax on manufacturers:

15           (A) Upon every person engaging or continuing within  
16           the State in the business of manufacturing,  
17           including compounding, canning, preserving,  
18           packing, printing, publishing, milling,  
19           processing, refining, or preparing for sale,  
20           profit, or commercial use, either directly or  
21           through the activity of others, in whole or in



1 part, any article or articles, substance or  
2 substances, commodity or commodities, the amount  
3 of the tax to be equal to the value of the  
4 articles, substances, or commodities,  
5 manufactured, compounded, canned, preserved,  
6 packed, printed, milled, processed, refined, or  
7 prepared for sale, as shown by the gross proceeds  
8 derived from the sale thereof by the manufacturer  
9 or person compounding, preparing, or printing  
10 them, multiplied by 0.5 per cent;

11 (B) The measure of the tax on manufacturers is the  
12 value of the entire product for sale, regardless  
13 of the place of sale or the fact that deliveries  
14 may be made to points outside the State; and

15 (C) If any person liable for the tax on manufacturers  
16 ships or transports the person's product, or any  
17 part thereof, out of the State, whether in a  
18 finished or unfinished condition, or sells the  
19 same for delivery to points outside the State  
20 (for example, consigned to a mainland purchaser  
21 via common carrier f.o.b. Honolulu), the value of



1 the products in the condition or form in which  
2 they exist immediately before entering interstate  
3 or foreign commerce, determined as hereinafter  
4 provided, shall be the basis for the assessment  
5 of the tax imposed by this paragraph. This tax  
6 shall be due and payable as of the date of entry  
7 of the products into interstate or foreign  
8 commerce, whether the products are then sold or  
9 not. The department shall determine the basis  
10 for assessment, as provided by this paragraph, as  
11 follows:

12 (i) If the products at the time of their entry  
13 into interstate or foreign commerce already  
14 have been sold, the gross proceeds of sale,  
15 less the transportation expenses, if any,  
16 incurred in realizing the gross proceeds for  
17 transportation from the time of entry of the  
18 products into interstate or foreign  
19 commerce, including insurance and storage in  
20 transit, shall be the measure of the value  
21 of the products;



1           (ii) If the products have not been sold at the  
2           time of their entry into interstate or  
3           foreign commerce, and in cases governed by  
4           clause (i) in which the products are sold  
5           under circumstances in which the gross  
6           proceeds of sale are not indicative of the  
7           true value of the products, the value of the  
8           products constituting the basis for  
9           assessment shall correspond as nearly as  
10          possible to the gross proceeds of sales for  
11          delivery outside the State, adjusted as  
12          provided in clause (i) or, if sufficient  
13          data is not available, sales in the State of  
14          similar products of like quality and  
15          character and in similar quantities, made by  
16          the taxpayer (unless not indicative of the  
17          true value), or by others. Sales outside  
18          the State, adjusted as provided in clause  
19          (i), may be considered when they constitute  
20          the best available data. The department



1                   shall prescribe uniform and equitable rules  
2                   for ascertaining the values;

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

9                   (iv) In all cases in which products leave the  
10                  State in an unfinished condition, the basis  
11                  for assessment shall be adjusted so as to  
12                  deduct the portion of the value as is  
13                  attributable to the finishing of the goods  
14                  outside the State;

15           (2) Tax on producers. Upon every person engaging or  
16           continuing within this State in the business of a  
17           producer, the tax shall be equal to 0.5 per cent of  
18           the gross proceeds of sales of the business, or the  
19           value of the products, for sale, if sold for delivery  
20           outside the State or shipped or transported out of the  
21           State, and the value of the products shall be



1           determined in the same manner as the value of  
2           manufactured products covered in the cases under  
3           paragraph (1)(C). No manufacturer or producer,  
4           engaged in the business of manufacturing or producing  
5           in the State and selling the manufacturer's or  
6           producer's products for delivery outside of the State  
7           (for example, consigned to a mainland purchaser via  
8           common carrier f.o.b. Honolulu), shall be required to  
9           pay the tax imposed in this chapter for the privilege  
10          of so selling the products, and the value or gross  
11          proceeds of sales of the products shall be included  
12          only in determining the measure of the tax imposed  
13          upon the manufacturer or producer;

14       (3) Tax on theaters, amusements, radio broadcasting  
15          stations, etc. Upon every person engaging or  
16          continuing within the State in the business of  
17          operating a theater, opera house, moving picture show,  
18          vaudeville, amusement park, dance hall, skating rink,  
19          radio broadcasting station, or any other place at  
20          which amusements are offered to the public, at



1           wholesale, the tax shall be 0.5 per cent of the gross  
2           proceeds of the business;

3           (4) Tax on service business. Upon every person engaging  
4           or continuing within the State in any service business  
5           or calling including professional services not  
6           otherwise specifically taxed under this chapter, as a  
7           wholesaler under section A-2, the tax shall be equal  
8           to 0.5 per cent of the gross proceeds of the business;

9           (5) Tax on sales by wholesalers:

10           (A) Upon every person who is engaged in the business  
11           of a wholesaler or jobber under section A-2 or  
12           selling any tangible personal property whatsoever  
13           (not including, however, bonds or other evidences  
14           of indebtedness, or stocks), there is hereby  
15           levied, and shall be assessed and collected, a  
16           tax equivalent to 0.5 per cent of the gross  
17           proceeds of sales of the business as a wholesaler  
18           or jobber as defined in section A-2; and

19           (B) Gross proceeds of sales of tangible property in  
20           interstate and foreign commerce shall constitute  
21           a part of the measure of the tax imposed on



1 persons in the business of selling tangible  
2 personal property as a wholesaler, to the extent,  
3 under the conditions, and in accordance with the  
4 provisions of the Constitution of the United  
5 States and the Acts of Congress of the United  
6 States that may be now in force or may be  
7 hereafter adopted, and whenever there occurs in  
8 the State an activity to which, under the  
9 Constitution and Acts of Congress, there may be  
10 attributed gross proceeds of sales, the gross  
11 proceeds shall be so attributed.

12 (b) When a manufacturer or producer, engaged in business  
13 in the State, also is engaged in selling the manufacturer's or  
14 producer's products in the State at wholesale taxed under this  
15 chapter, retail under chapter 237, or in any other manner, the  
16 tax for the privilege of engaging in the business of selling the  
17 products in the State shall apply to the manufacturer or  
18 producer as well as the tax for the privilege of manufacturing  
19 or producing in the State, and the manufacturer or producer  
20 shall make the returns of the gross proceeds of the wholesale,  
21 retail under chapter 237, or other sales required for the





1 privilege of selling in the State, as well as making the returns  
2 of the value or gross proceeds of sales of the products required  
3 for the privilege of manufacturing or producing in the State.

4 The manufacturer or producer shall pay the tax imposed in this  
5 chapter for the privilege of selling its products in the State,  
6 and the value or gross proceeds of sales of the products, thus  
7 subjected to tax, may be deducted insofar as duplicated as to  
8 the same products by the measure of the tax upon the

9 manufacturer or producer for the privilege of manufacturing or  
10 producing in the State under this chapter; provided that no  
11 producer of agricultural products who sells the products to a  
12 purchaser who will process the products outside the State shall  
13 be required to pay the tax imposed in this chapter for the  
14 privilege of producing or selling those products.

15 **§A-7 Resale certificates.** (a) The department, by rule,  
16 may require that a seller take from the purchaser of tangible  
17 personal property a certificate, in a form prescribed by the  
18 department, certifying that the sale is a sale at wholesale;  
19 provided that:

- 20 (1) Any purchaser who furnishes a certificate shall be  
21 obligated to pay to the seller, upon demand, the



1 amount of the additional tax that is imposed upon the  
2 seller whenever the sale in fact is not at wholesale;  
3 and

4 (2) The absence of a certificate in itself shall give rise  
5 to the presumption that the sale is not at wholesale  
6 unless the sales of the business are exclusively at  
7 wholesale.

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

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

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



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

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

10 (2) The absence of a certificate in itself shall give rise  
11 to the presumption that the sale is not at wholesale,  
12 unless the person rendering the sale is exclusively  
13 rendering services at wholesale.

14 **§A-8 Tax on receipts of sugar benefit payments.** Upon the  
15 amounts received from the United States government by any  
16 producer of sugar (or the producer's legal representative or  
17 heirs), as defined under and by virtue of the Sugar Act of 1948,  
18 as amended, or other Acts of the Congress of the United States  
19 relating thereto, there is hereby levied a tax of 0.5 per cent  
20 of the gross amount received; provided that the tax levied  
21 hereunder on any amount so received and actually disbursed to



1 another by a producer in the form of a benefit payment shall be  
2 paid by the person or persons to whom the amount is actually  
3 disbursed, and the producer actually making a benefit payment to  
4 another shall be entitled to claim on the producer's return a  
5 deduction from the gross amount taxable hereunder in the sum of  
6 the amount so disbursed. The amounts taxed under this section  
7 shall not be taxable under any other paragraph, subsection, or  
8 section of this chapter or chapter 237.

9       **§A-9 Segregation of gross income, etc., on records and in**  
10 **returns.** The imposition of taxes and the application of tax  
11 rates do not depend upon the business in which the taxpayer is  
12 primarily engaged. One business may be subject to two or more  
13 tax rates under this chapter and chapter 237. If a business is  
14 within the purview of two or more of the paragraphs of section  
15 237-13 or other provisions of this chapter or chapter 237, all  
16 of them apply, each provision being applicable to the  
17 appropriate item of gross income, gross proceeds of sales, or  
18 value of products. However, any person engaging or continuing  
19 in a business having gross income, gross proceeds of sales, and  
20 value of products, or any of these as the case may be, taxable  
21 at different rates, shall be subject to taxation upon the



1 aggregate amount of the gross income, gross proceeds of sales,  
2 and value of products of the business at the highest rate  
3 applicable to any part of the aggregate, unless the person shall  
4 segregate the parts taxable at different rates upon the person's  
5 records and in the person's returns, and shall sustain the  
6 burden of proving that the segregation was correctly made.

7       **§A-10 Assessment on generated electricity.** Any other  
8 provision of law to the contrary notwithstanding, the levy and  
9 assessment of tax on the gross proceeds from the sale of  
10 electric power to a public utility company for resale to the  
11 public, shall be made only as a tax on business of a producer,  
12 at the rate assessed producers under section A-6(a)(2).

13       **§A-11 Technicians.** When technicians supply dentists or  
14 physicians with dentures, orthodontic devices, braces, and  
15 similar items that have been prepared by the technician in  
16 accordance with specifications furnished by the dentist or  
17 physician, and these items are to be used by the dentist or  
18 physician in the dentist's or physician's professional practice  
19 for a particular patient who is to pay the dentist or physician  
20 for the same as a part of the dentist's or physician's  
21 professional services, the technician shall be taxed as though



1 the technician were a manufacturer selling a product under  
2 A-6(a)(1) to a licensed retailer, rather than pursuant to  
3 chapter 237, at the rate of 4 per cent that is generally applied  
4 to professions and services.

5       **SA-12 Activity ordered by others.** (a) Where, through the  
6 activity of a person taxable under section 237-13(5), a product  
7 has been milled, processed, or otherwise manufactured upon the  
8 order of another taxpayer who is a manufacturer taxable upon the  
9 value of the entire manufactured products, that consists in part  
10 of the value of the services taxable under section 237-13(5), so  
11 much gross income as is derived from the rendering of the  
12 services shall be subjected to tax on the person rendering the  
13 services at the rate of 0.5 cent, and the value of the entire  
14 product shall be included in the measure of the tax imposed on  
15 the other taxpayer as elsewhere provided.

16       (b) Where, through the activity of a person taxable under  
17 section 237-13(5), there have been rendered to a cane planter  
18 services consisting in the harvesting or hauling of the cane, or  
19 consisting in road maintenance, under a contract between the  
20 person rendering the services and the cane planter, covering the  
21 services and also the milling of the sugar, the services of



1 harvesting and hauling the cane and road maintenance shall be  
2 treated the same as the service of milling the cane, as provided  
3 by subsection (a), and the value of the entire product,  
4 manufactured or sold for the cane planter under the contract,  
5 shall be included in the measure of the tax imposed on the  
6 persons as elsewhere provided.

7       **§A-13 Sales of telecommunications services through prepaid**  
8 **telephone calling service.** (a) For the purposes of this  
9 section, "prepaid telephone calling service" means the right to  
10 exclusively purchase telecommunications services, paid for in  
11 advance, that enables the origination of calls using an access  
12 number or authorization code, whether manually or electronically  
13 dialed.

14       (b) If the sale or recharge of a prepaid telephone calling  
15 service does not take place at the vendor's place of business,  
16 it shall be conclusively determined to take place at the  
17 customer's shipping address; or if there is no item shipped,  
18 then it shall be the customer's billing address.

19       (c) When a person licensed under this chapter sells  
20 prepaid telephone calling services to a licensed retail  
21 merchant, jobber, or other licensed seller for purposes of



1 resale, the person shall be taxed as a wholesaler selling  
2 tangible personal property.

3 (d) For purposes of prepaid telephone calling services  
4 only, all the services shall be taxed under this section and  
5 shall be in lieu of taxation under chapter 239.

6 **§A-14 Apportionment.** In the case of a tax upon the  
7 production of property in the State, the apportionment shall be  
8 determined as in the case of the tax on manufacturers provided  
9 in section A-6(a)(1).

10 **§A-15 Conformity to Constitution.** Section 237-22 shall  
11 apply to this chapter.

12 **§A-16 Exemptions.** The exemptions provided in sections  
13 237-23, 237-26, 237-27, 237-27.5, 237-29, 237-29.5, and  
14 237-29.53 shall apply to this chapter.

15 **§A-17 Amounts not taxable.** This chapter shall not apply  
16 to the following amounts:

17 (1) The amounts of taxes on cigarettes and tobacco  
18 products imposed by chapter 245 on wholesalers or  
19 dealers holding licenses under that chapter and  
20 selling the products at wholesale;





1           (2) The amounts of federal taxes imposed on sugar  
2           manufactured in the State, paid by the manufacturer to  
3           the federal government;

4           (3) Gross income received by any blind, deaf, or totally  
5           disabled person engaging, or continuing, in any  
6           business, trade, activity, occupation, or calling  
7           within the State; a corporation all of whose  
8           outstanding shares are owned by an individual or  
9           individuals who are blind, deaf, or totally disabled;  
10          a general, limited, or limited liability partnership,  
11          all of whose partners are blind, deaf, or totally  
12          disabled; or a limited liability company, all of whose  
13          members are blind, deaf, or totally disabled; and

14          (4) Amounts received by a producer of sugarcane from the  
15          manufacturer to whom the producer sells the sugarcane,  
16          where:

17           (A) The producer is an independent cane farmer, so  
18           classed by the Secretary of Agriculture under the  
19           Sugar Act of 1948 (61 Stat. 922, Chapter 519) as  
20           the Act may be amended or supplemented;



1 (B) The value or gross proceeds of sale of the sugar,  
2 and other products manufactured from the  
3 sugarcane, is included in the measure of the tax  
4 levied on the manufacturer under section  
5 A-6(a) (1);

6 (C) The producer's gross proceeds of sales are  
7 dependent upon the actual value of the products  
8 manufactured therefrom or the average value of  
9 all similar products manufactured by the  
10 manufacturer; and

11 (D) The producer's gross proceeds of sales are  
12 reduced by reason of the tax on the value or sale  
13 of the manufactured products.

14 **§A-18 Exemption for sale of tangible personal property for**  
15 **resale at wholesale.** (a) There shall be exempted from, and  
16 excluded from the measure of, the taxes imposed by this chapter  
17 all of the gross proceeds or gross income arising from the sale  
18 of tangible personal property imported to Hawaii from a foreign  
19 or domestic source to a licensed taxpayer for subsequent resale  
20 for the purpose of sale at wholesale as defined under section  
21 A-2.



(b) The department, by rule, may provide that a seller may take from the purchaser of imported tangible personal property, a certificate in a form that the department shall prescribe, certifying that the purchaser of the imported tangible personal property shall resell the imported tangible personal property at wholesale as defined under section A-2. Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, if the sale in fact is not a sale for the purpose of resale at wholesale, the amount of the additional tax that is imposed upon the seller. The absence of a certificate, unless the sales of the business are exclusively a sale for the purpose of resale at wholesale, in itself, shall give rise to the presumption that the sale is not a sale for the purpose of resale at wholesale.

**§A-19 Administrative provisions.** Sections 237-8, 237-20, 237-21, 237-30, 237-31, 237-32, 237-33, 237-33.5, 237-34, 237-35, 237-36, 237-37, 237-38, 237-39, 237-40, 237-41, 237-42, 237-43, 237-46, 237-47, 237-49, and 237-A to 237-F shall apply to this chapter."



SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER B**

**TAX ON IMPORT OF GOODS, SERVICES, AND CONTRACTING FOR RESALE**

**§B-1 Definitions.** Definitions contained in section 238-1 shall apply to this chapter.

**§B-2 Imposition of tax on tangible personal property; exemptions.** There is hereby levied an excise tax on the use in this State of tangible personal property that is imported by a taxpayer in this State whether owned, purchased from an unlicensed seller, or however acquired for use in this State. The tax imposed by this chapter shall accrue when the property is acquired by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rate of the tax hereby imposed and the exemptions thereof are as follows:

(1) If the importer or purchaser is licensed under chapter

A and is:

(A) A wholesaler or jobber importing or purchasing for purposes of sale or resale; or



1 (B) A manufacturer importing or purchasing material  
2 or commodities that are to be incorporated by the  
3 manufacturer into a finished or saleable product  
4 (including the container or package in which the  
5 product is contained) wherein it will remain in a  
6 form as to be perceptible to the senses, and the  
7 finished or saleable product is to be sold in a  
8 manner as to result in a further tax on the  
9 activity of the manufacturer as the manufacturer  
10 or as a wholesaler, and not as a retailer;  
11 there shall be no tax; provided that if the  
12 wholesaler, jobber, or manufacturer is also engaged in  
13 business as a retailer (so classed under chapter 237),  
14 paragraph (2) shall apply to the wholesaler, jobber,  
15 or manufacturer, but the director of taxation shall  
16 refund to the wholesaler, jobber, or manufacturer, in  
17 the manner provided under section 231-23(c) the amount  
18 of tax as the wholesaler, jobber, or manufacturer  
19 shall establish, to the satisfaction of the director,  
20 to have been paid by the wholesaler, jobber, or  
21 manufacturer to the director with respect to property



1           that has been used by the wholesaler, jobber, or  
2           manufacturer for the purposes stated in this  
3           paragraph; and

4       (2) If the importer or purchaser is licensed under chapter  
5       237 and is:

6       (A) A retailer or other person importing or  
7           purchasing for purposes of sale or resale, not  
8           exempted by paragraph (1);

9       (B) A manufacturer importing or purchasing material  
10       or commodities that are to be incorporated by the  
11       manufacturer into a finished or saleable product  
12       (including the container or package in which the  
13       product is contained) wherein it will remain in a  
14       form as to be perceptible to the senses, and the  
15       finished or saleable product is to be sold at  
16       retail in this State, in a manner as to result in  
17       a further tax on the activity of the manufacturer  
18       in selling the products at retail;

19       (C) A contractor importing or purchasing material or  
20       commodities that are to be incorporated by the  
21       contractor into the finished work or project



1 required by the contract and that will remain in  
2 the finished work or project in a form as to be  
3 perceptible to the senses;

4 (D) A person engaged in a service business or calling  
5 as defined in section 237-7, or a person  
6 furnishing transient accommodations subject to  
7 the tax imposed by section 237D-2, in which the  
8 import or purchase of tangible personal property  
9 would have qualified as a sale at wholesale as  
10 defined in section A-2(a)(8) had the seller of  
11 the property been subject to the tax in chapter  
12 237; or

13 (E) A publisher of magazines or similar printed  
14 materials containing advertisements, when the  
15 publisher is under contract with the advertisers  
16 to distribute a minimum number of magazines or  
17 similar printed materials to the public or  
18 defined segment of the public, whether or not  
19 there is a charge to the persons who actually  
20 receive the magazines or similar printed  
21 materials,



1           the tax shall be 0.5 per cent of the purchase price of  
2           the property, if the purchase and sale are consummated  
3           in Hawaii; or, if there is no purchase price  
4           applicable thereto, or if the purchase or sale is  
5           consummated outside of Hawaii, then 0.5 per cent of  
6           the value of the property.

7           **SB-3 Imposition of tax on imported services or**  
8           **contracting; exemptions.** There is hereby levied an excise tax  
9           on the value of services or contracting as defined in section  
10          237-6 that is performed by an unlicensed seller at a point  
11          outside the State and imported or purchased for use in this  
12          State. The tax imposed by this chapter shall accrue when the  
13          service or contracting as defined in section 237-6 is received  
14          by the importer or purchaser and becomes subject to the taxing  
15          jurisdiction of the State. The rate of the tax hereby imposed  
16          and the exemptions from the tax are as follows:

17          (1) If the importer or purchaser is licensed under chapter  
18              A and is:

19              (A) Engaged in a service business or calling in which  
20                  the imported or purchased services or contracting  
21                  becomes identifiable elements, excluding





1           overhead, of the services rendered by the  
2           importer or purchaser, and the gross income of  
3           the importer or purchaser is subject to the tax  
4           imposed under chapter A on services at the rate  
5           of 0.5 per cent; or

6           (B) A manufacturer importing or purchasing services  
7           or contracting that becomes identifiable  
8           elements, excluding overhead, of a finished or  
9           saleable product (including the container or  
10          package in which the product is contained) and  
11          the finished or saleable product is to be sold in  
12          a manner that results in a further tax under  
13          chapter A on the manufacturer as a wholesaler,  
14          and not a retailer,

15          there shall be no tax imposed on the value of the  
16          imported or purchased services or contracting;  
17          provided that if the manufacturer is also engaged in  
18          business as a retailer as classified under chapter  
19          237, paragraph (2) shall apply to the manufacturer,  
20          but the director of taxation shall refund to the  
21          manufacturer, in the manner provided under section



1           231-23(c), that amount of tax that the manufacturer,  
2           to the satisfaction of the director, shall establish  
3           to have been paid by the manufacturer to the director  
4           with respect to services that have been used by the  
5           manufacturer for the purposes stated in this  
6           paragraph; and

7       (2) If the importer or purchaser is a person licensed  
8       under chapter 237 and is:

9           (A) Engaged in a service business or calling in which  
10           the imported or purchased services or contracting  
11           becomes identifiable elements, excluding  
12           overhead, of the services rendered by the  
13           importer or purchaser, and the gross income from  
14           those services when sold by the importer or  
15           purchaser is subject to the tax imposed under  
16           chapter 237;

17          (B) A manufacturer importing or purchasing services  
18           or contracting that becomes identifiable  
19           elements, excluding overhead, of the finished or  
20           saleable manufactured product (including the  
21           container or package in which the product is



1 contained) and the finished or saleable product  
2 is to be sold in a manner that results in a  
3 further tax under chapter 237 on the activity of  
4 the manufacturer as a retailer; or

5 (C) A contractor importing or purchasing services or  
6 contracting that becomes identifiable elements,  
7 excluding overhead, of the finished work or  
8 project required under the contract, and where  
9 the gross proceeds derived by the contractor are  
10 subject to the tax under section 237-13(2) as a  
11 contractor,

12 the tax shall be 0.5 per cent of the value of the  
13 imported or purchased services or contracting.

14 **§B-4 Application of tax, etc.** Section 238-3 shall apply  
15 to this chapter.

16 **§B-5 Certain property used by producers.** If a licensed  
17 producer, or a cooperative association acting under the  
18 authority of chapter 421, in order to sell to the producer, or a  
19 licensed person, imports into the State or acquires in the State  
20 commodities, materials, items, services, or living things  
21 enumerated in section A-2(a)(3) and (a)(5) to (a)(7), then



1 section A-2 shall apply. If section A-2 applies and the  
2 producer is engaged in the sale of the producer's products at  
3 retail or in any manner other than at wholesale, then the tax  
4 upon use of property in the State imposed by section 238-2 shall  
5 apply the same as in the case of a purchaser who is a licensed  
6 retailer. In other cases no tax shall be imposed under this  
7 chapter.

8 **§B-6 Administration.** Sections 238-5, 238-6, 238-7, 238-8,  
9 238-9, 238-9.5, 238-10, 238-11, 238-13, 238-14, and 238-16 shall  
10 apply to this chapter."

11 SECTION 4. The Hawaii Revised Statutes is amended by  
12 adding a new chapter to be appropriately designated and to read  
13 as follows:

14 "CHAPTER C

15 INSURANCE PRODUCER'S TAX

16 **§C-1 Definitions.** The definitions contained in sections  
17 237-1, 237-2, and 237-3 shall apply to this chapter.

18 **§C-2 Tax on insurance producers.** Upon every person  
19 engaged as a licensed producer pursuant to chapter 431, there is  
20 hereby levied and shall be assessed and collected a tax equal to  
21 0.15 per cent of the commissions due to that activity.



1       **SC-3 Apportionment.** Where insurance producers, who are  
2 not employees and are licensed pursuant to chapter 431, produce  
3 commissions that are divided between the insurance producers,  
4 the tax levied under section C-2 as to insurance producers shall  
5 apply to each producer with respect to the producer's portion of  
6 the commissions, and no more.

7       **SC-4 Administrative provisions.** Sections 237-8, 237-9,  
8 237-9.5, 237-11, 237-12, 237-30, 237-31, 237-32, 237-33,  
9 237-33.5, 237-34, 237-35, 237-36, 237-37, 237-38, 237-39,  
10 237-40, 237-41, 237-42, 237-43, 237-46, 237-47, 237-49, and  
11 237-A to 237-F shall apply to this chapter."

12       SECTION 5. Chapter 46, Hawaii Revised Statutes, is amended  
13 by adding a new section to be appropriately designated and to  
14 read as follows:

15       "§46-     County compliance with the streamlined sales and  
16 use tax agreement. The counties shall not adopt any ordinance  
17 or interpret any ordinance in a manner that violates the  
18 streamlined sales and use tax agreement established by the  
19 Streamlined Sales Tax Governing Board, Incorporated, and adopted  
20 pursuant to chapter 255D."



SECTION 6. Chapter 237, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

**"§237-A General sourcing rules.**

(1) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

(A) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(B) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's designated donee) occurs, including the location indicated by instructions for delivery to the purchaser (or designated donee), known to the seller;

(C) When subparagraph (A) or (B) does not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's



1           business when use of this address does not  
2           constitute bad faith;

3        (D) When subparagraphs (A), (B), and (C) do not  
4           apply, the sale is sourced to the location  
5           indicated by an address for the purchaser  
6           obtained during the consummation of the sale,  
7           including the address of a purchaser's payment  
8           instrument, if no other address is available,  
9           when use of this address does not constitute bad  
10          faith; or

11       (E) When subparagraphs (A), (B), (C), and (D) do not  
12           apply, including the circumstance in which the  
13           seller is without sufficient information to apply  
14           subparagraphs (A), (B), (C), and (D), then the  
15           location shall be determined by the address from  
16           which tangible personal property was shipped,  
17           from which the digital good or the computer  
18           software delivered electronically was first  
19           available for transmission by the seller, or from  
20           which the service was provided (disregarding for



1           these purposes any location that merely provided  
2           the digital transfer of the product sold);

3       (2) The lease or rental of tangible personal property,  
4       other than property identified in paragraph (3) or  
5       (4), shall be sourced as follows:

6       (A) For a lease or rental that requires recurring  
7       periodic payments, the first periodic payment is  
8       sourced the same as a retail sale in accordance  
9       with paragraph (1). Periodic payments made  
10       subsequent to the first payment are sourced to  
11       the primary property location for each period  
12       covered by the payment. The primary property  
13       location shall be as indicated by an address for  
14       the property provided by the lessee that is  
15       available to the lessor from its records  
16       maintained in the ordinary course of business,  
17       when use of this address does not constitute bad  
18       faith. The property location shall not be  
19       altered by intermittent use at different  
20       locations, such as use of business property that





1 accompanies employees on business trips and  
2 service calls; or

3 (B) For a lease or rental that does not require  
4 recurring periodic payments, the payment is  
5 sourced the same as a retail sale in accordance  
6 with paragraph (1).

7 This paragraph does not affect the imposition or  
8 computation of general excise or use tax on leases or  
9 rentals based on a lump sum or accelerated basis, or  
10 on the acquisition of property for lease;

11 (3) The lease or rental of motor vehicles, trailers,  
12 semi-trailers, or aircraft that do not qualify as  
13 transportation equipment, as defined in paragraph (4),  
14 shall be sourced as follows:

15 (A) For a lease or rental that requires recurring  
16 periodic payments, each periodic payment is  
17 sourced to the primary property location. The  
18 primary property location shall be as indicated  
19 by an address for the property provided by the  
20 lessee that is available to the lessor from its  
21 records maintained in the ordinary course of



1           business, when use of this address does not  
2           constitute bad faith. This location shall not be  
3           altered by intermittent use at different  
4           locations; or

5       (B) For a lease or rental that does not require  
6           recurring periodic payments, the payment is  
7           sourced the same as a retail sale in accordance  
8           with paragraph (1).

9       This paragraph does not affect the imposition or  
10       computation of general excise or use tax on leases or  
11       rentals based on a lump sum or accelerated basis, or  
12       on the acquisition of property for lease; and

13       (4) The retail sale, including lease or rental, of  
14           transportation equipment shall be sourced the same as  
15           a retail sale in accordance with paragraph (1),  
16           notwithstanding the exclusion of lease or rental in  
17           paragraph (1). "Transportation equipment" means any  
18           of the following:

19       (A) Locomotives and rail cars that are utilized for  
20           the carriage of persons or property in interstate  
21           commerce;



1        (B) Trucks and truck-tractors with a gross vehicle  
2        weight rating of ten thousand one pounds or  
3        greater, trailers, semi-trailers, or passenger  
4        buses that are:

5        (i) Registered through the international  
6        registration plan; and

7        (ii) Operated under authority of a carrier  
8        authorized and certificated by the United  
9        States Department of Transportation or  
10       another federal authority to engage in the  
11       carriage of persons or property in  
12       interstate commerce;

13       (C) Aircraft that are operated by air carriers  
14       authorized and certificated by the United States  
15       Department of Transportation or another federal  
16       or a foreign authority to engage in the carriage  
17       of persons or property in interstate or foreign  
18       commerce; and

19       (D) Containers designed for use on and component  
20       parts attached or secured on the items set forth  
21       in subparagraphs (A) to (C).



1        **§237-B General sourcing definitions.**    For the purposes of  
2        section 237-A(1), the terms "receive" and "receipt" mean:

- 3            (1) Taking possession of tangible personal property;  
4            (2) Making first use of services; or  
5            (3) Taking possession or making first use of digital  
6            goods,

7        whichever comes first.

8            The terms "receive" and "receipt" do not include possession  
9        by a shipping company on behalf of the purchaser.

10       **§237-C Telecommunications sourcing rule.**    (a) Except for  
11       the defined telecommunications services in subsection (c), the  
12       sale of telecommunications service sold on a call-by-call basis  
13       shall be sourced to:

- 14            (1) Each level of taxing jurisdiction where the call  
15            originates and terminates in that jurisdiction; or  
16            (2) Each level of taxing jurisdiction where the call  
17            either originates or terminates and in which the  
18            service address is also located.

19            (b) Except for the defined telecommunications services in  
20        subsection (c), a sale of telecommunications service sold on a



1 basis other than a call-by-call basis, is sourced to the  
2 customer's place of primary use.

3 (c) The sale of the following telecommunications services  
4 shall be sourced to each level of taxing jurisdiction as  
5 follows:

6 (1) A sale of mobile telecommunications service other than  
7 air-to-ground radiotelephone service and prepaid  
8 calling service, is sourced to the customer's place of  
9 primary use as required by the Mobile  
10 Telecommunications Sourcing Act;

11 (2) A sale of post-paid calling service is sourced to the  
12 origination point of the telecommunications signal as  
13 first identified by either:

14 (A) The seller's telecommunications system; or

15 (B) Information received by the seller from its  
16 service provider, where the system used to  
17 transport the signals is not that of the seller;

18 (3) A sale of prepaid calling service or a sale of a  
19 prepaid wireless calling service is sourced in  
20 accordance with section 237-A; provided that in the  
21 case of a sale of prepaid wireless calling service,



1 section 237-A(1)(E) shall apply in addition to an  
2 option to use the location associated with the mobile  
3 telephone number; or

4 (4) A sale of a private communication service is sourced  
5 as follows:

6 (A) Service for a separate charge related to a  
7 customer channel termination point is sourced to  
8 each level of jurisdiction in which the customer  
9 channel termination point is located;

10 (B) Service where all customer termination points are  
11 located entirely within one jurisdiction or  
12 levels of jurisdiction is sourced in the  
13 jurisdiction in which the customer channel  
14 termination points are located; or

15 (C) Service for segments of a channel between two  
16 customer channel termination points located in  
17 different jurisdictions and that segment of a  
18 channel are separately charged is sourced 50 per  
19 cent in each level of jurisdiction in which the  
20 customer channel termination points are located.



1           Service for segments of a channel located in more than  
2           one jurisdiction or levels of jurisdiction and where  
3           the segments are not separately billed shall be  
4           sourced in each jurisdiction based on the percentage  
5           determined by dividing the number of customer channel  
6           termination points in the jurisdiction by the total  
7           number of customer channel termination points in all  
8           jurisdictions.

9           **§237-D Telecommunications sourcing definitions.** For the  
10          purpose of section 237-C, the following definitions shall apply:

11          "Air-to-ground radiotelephone service" means a radio  
12          service, as that term is defined in 47 C.F.R. 22.99, in which  
13          common carriers are authorized to offer and provide radio  
14          telecommunications service for hire to subscribers in aircraft.

15          "Call-by-call basis" means any method of charging for  
16          telecommunications services where the price is measured by  
17          individual calls.

18          "Communications channel" means a physical or virtual path  
19          of communications over which signals are transmitted between or  
20          among customer channel termination points.

21          "Customer":



1        (1) Means the person or entity that contracts with the  
2        seller of telecommunications services. For the  
3        purpose of sourcing sales of telecommunications  
4        services under section 237-C, the end user of  
5        telecommunications services is not the contracting  
6        party, the end user of the telecommunications service  
7        is the customer of the telecommunications service; and

8        (2) Does not include a reseller of telecommunications  
9        service or for mobile telecommunications service of a  
10       serving carrier under an agreement to serve the  
11       customer outside the home service provider's licensed  
12       service area.

13       "Customer channel termination point" means the location  
14       where the customer either inputs or receives the communications.

15       "End user" means the person who utilizes the  
16       telecommunications service. In the case of an entity, "end  
17       user" means the individual who utilizes the service on behalf of  
18       the entity.

19       "Home service provider" has the same meaning as that term  
20       is defined in section 124(5) of Public Law 106-252 (Mobile  
21       Telecommunications Sourcing Act).





1       "Mobile telecommunications service" has the same meaning as  
2       that term is defined in section 124(7) of Public Law 106-252  
3       (Mobile Telecommunications Sourcing Act).

4       "Place of primary use" means the street address  
5       representative of where the customer's use of the  
6       telecommunications service primarily occurs, that shall be the  
7       residential street address or the primary business street  
8       address of the customer. In the case of mobile  
9       telecommunications services, "place of primary use" shall be  
10      within the licensed service area of the home service provider.

11      "Post-paid calling service" means the telecommunications  
12      service obtained by making a payment on a call-by-call basis  
13      either through the use of a credit card or payment mechanism  
14      such as a bank card, travel card, or debit card, or by charge  
15      made to a telephone number that is not associated with the  
16      origination or termination of the telecommunications service. A  
17      post-paid calling service includes a telecommunications service,  
18      except a prepaid wireless calling service, that would be a  
19      prepaid calling service except it is not exclusively a  
20      telecommunications service.



1       "Prepaid calling service" means the right to access  
2 exclusively telecommunications services that must be paid in  
3 advance and that enables the origination of calls using an  
4 access number or authorization code, whether manually or  
5 electronically dialed, and is sold in predetermined units or  
6 dollars of which the number declines with use in a known amount.

7       "Prepaid wireless calling service" means a  
8 telecommunications service that provides the right to utilize  
9 mobile wireless service as well as other non-telecommunications  
10 services, including the download of digital products delivered  
11 electronically, and content and ancillary services, that shall  
12 be paid for in advance and is sold in predetermined units or  
13 dollars of which the number declines with use in a known amount.

14       "Private communication service" means a telecommunications  
15 service that entitles the customer to exclusive or priority use  
16 of a communications channel or group of channels between or  
17 among termination points, regardless of the manner in which the  
18 channel or channels are connected, and includes switching  
19 capacity, extension lines, stations, and any other associated  
20 services that are provided in connection with the use of the  
21 channel or channels.



1     "Service address" means:

2     (1) The location of the telecommunications equipment to  
3     which a customer's call is charged and from which the  
4     call originates or terminates, regardless of where the  
5     call is billed or paid;

6     (2) If the location in paragraph (1) is not known, service  
7     address means the origination point of the signal of  
8     the telecommunications service first identified by  
9     either the seller's telecommunications system or in  
10    information received by the seller from its service  
11    provider, where the system used to transport the  
12    signals is not that of the seller; or

13    (3) If the location in paragraphs (1) and (2) is not  
14    known, service address means the location of the  
15    customer's place of primary use.

16    **§237-E Deduction for bad debts.** (a) A seller shall be  
17    allowed a deduction from taxable sales for bad debts. A seller  
18    may deduct the amount of bad debts from the seller's gross  
19    sales, rentals, or services used for the computation of the tax.  
20    The amount of gross sales, rentals, or services deducted shall  
21    be charged off as uncollectible on the books and records of the



1 seller at the time the debt becomes worthless and deducted on  
2 the return for the period during which the bad debt is written  
3 off as uncollectible in the claimant's books and records and  
4 shall be eligible to be deducted for income tax purposes.

5 For the purposes of this section, a claimant who is not  
6 required to file a federal income tax return may deduct a bad  
7 debt on a return filed for the period in which the bad debt  
8 becomes worthless and is written off as uncollectible in the  
9 claimant's books and records and would be eligible for a bad  
10 debt deduction for federal income tax purposes if the claimant  
11 was required to file a federal income tax return.

12 If a consumer or other person pays all or part of a bad  
13 debt with respect to which a seller claimed a deduction under  
14 this section, the seller is liable for the amount of taxes  
15 deducted in connection with that portion of the debt for which  
16 payment is received and shall remit these taxes in the seller's  
17 next payment to the department. Any payments made on a bad debt  
18 shall be applied proportionally first to the taxable price of  
19 the property and the tax on the property and second to any  
20 interest, service, or other charge.



1        (b) Any claim for a bad debt deduction under this section  
2 shall be supported by evidence required by the department. The  
3 department shall review any change in the rate of taxation  
4 applicable to any taxable sales, rentals, or services by a  
5 seller claiming a deduction pursuant to this section and shall  
6 ensure that the deduction on any bad debt does not result in the  
7 seller claiming the deduction recovering any more or less than  
8 the taxes imposed on the sale, rental, or service that  
9 constitutes the bad debt.

10       (c) If a certified service provider assumed filing  
11 responsibility under chapter 255D, the certified service  
12 provider may claim, on behalf of the seller, any bad debt  
13 allowable to the seller and shall credit or refund that amount  
14 of bad debt allowed or refunded to the seller.

15       (d) If the books and records of a seller under chapter  
16 255D, who claims a bad debt allowance, support an allocation of  
17 the bad debts among member states of that agreement, the seller  
18 may allocate the bad debt.

19       (e) As used in this section, "bad debt" means any portion  
20 of a debt resulting from a seller's collection of the use tax  
21 under chapter 255D on the purchase of tangible personal property



1 or services that is not otherwise deductible or excludable and  
2 is eligible to be claimed, or could be eligible to be claimed if  
3 the seller kept accounts on an accrual basis, as a deduction  
4 pursuant to section 166 (with respect to bad debts) of the  
5 Internal Revenue Code. A bad debt does not include any of the  
6 following:

7 (1) Interest, finance charge, or use tax on the purchase  
8 price;

9 (2) Uncollectible amounts on property that remains in the  
10 possession of the seller until the full purchase price  
11 is paid;

12 (3) Expenses incurred in attempting to collect any account  
13 receivable or any portion of the debt recovered;

14 (4) Any accounts receivable that have been sold to and  
15 remain in the possession of a third party for  
16 collection; or

17 (5) Repossessed property.

18 **§237-F Direct mail sourcing.** (a) Notwithstanding the  
19 general sourcing provisions of section 237-A, a purchaser of  
20 direct mail who is not a holder of a direct pay permit shall  
21 provide to the seller, in conjunction with the purchase, either



1 a direct mail form or information to show the jurisdictions to  
2 which the direct mail is delivered to recipients.

3 Upon receipt of the direct mail form, the seller shall be  
4 relieved of all obligations to collect, pay, or remit the  
5 applicable tax and the purchaser shall be obligated to pay or  
6 remit the applicable tax on a direct pay basis. A direct mail  
7 form shall remain in effect for all future sales of direct mail  
8 by the seller to the purchaser until it is revoked in writing.

9 Upon receipt of information from the purchaser showing the  
10 jurisdictions to which the direct mail is delivered to  
11 recipients, the seller shall collect the tax according to the  
12 delivery information provided by the purchaser. In the absence  
13 of bad faith, the seller shall be relieved of any further  
14 obligation to collect tax on any transaction for which the  
15 seller has collected tax pursuant to the delivery information  
16 provided by the purchaser.

17 (b) If the purchaser of direct mail does not have a direct  
18 pay permit and does not provide the seller with either a direct  
19 mail form or delivery information as required under subsection  
20 (a), the seller shall collect the tax. Nothing in this



1 subsection shall limit a purchaser's obligation for sales or use  
2 tax to any state to which the direct mail is delivered.

3 (c) If a purchaser of direct mail provides the seller with  
4 documentation of direct pay authority, the purchaser shall not  
5 be required to provide a direct mail form or delivery  
6 information to the seller.

7 (d) Receipts from sales of direct mail for distribution to  
8 out-of-state recipients and receipts from sales of direct mail  
9 processing services in connection with distribution of direct  
10 mail to out-of-state recipients shall be exempt from taxation  
11 under this chapter. The exemption provided by this section  
12 shall apply to receipts from charges for the printing or  
13 production of direct mail, whether prepared in or shipped into  
14 Hawaii, after preparation, and stored for subsequent shipment to  
15 out-of-state customers. The direct mail processing services  
16 exemption provided under this section shall apply to receipts  
17 from charges for all direct mail processing services for  
18 distribution to out-of-state recipients, including but not  
19 limited to preparing and maintaining mailing lists, addressing,  
20 separating, folding, inserting, sorting, and packaging direct





1 mail materials, and transporting the direct mail to the point of  
2 shipment by the mail service or other carrier."

3 SECTION 7. Section 237-1, Hawaii Revised Statutes, is  
4 amended by adding seven new definitions to be appropriately  
5 inserted and to read as follows:

6 "Delivery charges" means charges by the seller for  
7 preparation and delivery to a location designated by the  
8 purchaser of personal property or services, including but not  
9 limited to transportation, shipping, postage, handling, crating,  
10 and packing. If a shipment includes both exempt and taxable  
11 property, the seller shall allocate the delivery charge by  
12 using:

13 (1) A percentage based on the total sales price of the  
14 taxable property compared to the total sales price of  
15 all property in the shipment; or

16 (2) A percentage based on the total weight of the taxable  
17 property compared to the total weight of all property  
18 in the shipment.

19 "Department" means the department of taxation.

20 "Direct mail":



1        (1) Means printed material delivered or distributed by  
2        United States mail or other delivery service to a mass  
3        audience or to addresses on a mailing list provided by  
4        the purchaser, or at the direction of the purchaser,  
5        in cases in which the cost of the items are not billed  
6        directly to the recipients;

7        (2) Includes tangible personal property supplied directly  
8        or indirectly by the purchaser to the direct mail  
9        seller for inclusion in the package containing the  
10       printed material; and

11       (3) Does not include multiple items of printed material.

12       "Lease or rental":

13       (1) Means any transfer of possession or control of  
14       tangible personal property for a fixed or  
15       indeterminate term for consideration;

16       (2) May include future options to purchase or extend; and

17       (3) Does not include:

18       (A) A transfer of possession or control of property  
19       under a security agreement or deferred payment  
20       plan that requires the transfer of title upon  
21       completion of the required payments;



- 1        (B) A transfer of possession or control of property  
2        under an agreement that requires the transfer of  
3        title upon completion of required payments and  
4        payment of an option price that does not exceed  
5        the greater of \$100 or 1 per cent of the total  
6        required payments;
- 7        (C) Providing tangible personal property along with  
8        an operator for a fixed or indeterminate period  
9        of time. A condition of this exclusion is that  
10       the operator is necessary for the equipment to  
11       perform as designed. For the purpose of this  
12       subparagraph, an operator shall do more than  
13       maintain, inspect, or set-up the tangible  
14       personal property; or
- 15       (D) Agreements covering motor vehicles and trailers  
16       where the amount of consideration may be  
17       increased or decreased by reference to the amount  
18       realized upon sale or disposition of the property  
19       as defined in section 7701(h) (with respect to  
20       motor vehicle operating leases) of the Internal  
21       Revenue Code.



1        For the purposes of this chapter, the definition of "lease  
2 or rental" shall be used regardless of whether a transaction is  
3 characterized as a lease or rental under generally accepted  
4 accounting principles, the federal Internal Revenue Code, or  
5 other provisions of federal, state, or local law; provided that  
6 this definition shall not apply to section 237-16.5 or 237-43.

7        "Purchase price" applies to the measure subject to use tax  
8 and has the same meaning as sales price.

9        "Sales price" applies to the measure subject to tax and  
10 means the total amount of consideration, including cash, credit,  
11 property, and services for which personal property or services  
12 are sold, leased, or rented, valued in money, whether money is  
13 received or otherwise, without any deduction for the following:

14        (1) The seller's cost of the property sold;

15        (2) The cost of the materials used, labor or service cost,  
16 losses, all costs of transportation to the seller, all  
17 taxes imposed on the seller, and any other expense of  
18 the seller;

19        (3) Charges by the seller for any services necessary to  
20 complete the sale, other than delivery and  
21 installation charges;



1        (4) Delivery and installation charges; or

2        (5) Installation charges.

3        "Tangible personal property" means personal property that  
4 can be seen, weighed, measured, felt, or touched, or that is in  
5 any manner perceptible to the senses. Tangible personal  
6 property includes gas, steam, and prewritten computer software."

7        SECTION 8. Chapter 239, Hawaii Revised Statutes, is  
8 amended by adding a new section to part II to be appropriately  
9 designated and to read as follows:

10        "§239-        **Treatment of conflicts.** In a case where the tax  
11 under chapter 237 and this part may be applied to the same gross  
12 income or gross proceeds, the tax shall only be levied,  
13 assessed, and collected under chapter 237."

14        SECTION 9. Chapter 255D, Hawaii Revised Statutes, is  
15 amended by adding nine new sections to be appropriately  
16 designated and to read as follows:

17        "§255D-A        **Relief from certain liability.** All sellers and  
18 certified service providers as defined in section 255D-2 using  
19 databases pursuant to section 255D-D(f) and (g) shall be  
20 relieved from liability to the state and local jurisdictions for  
21 having charged and collected the incorrect amount of sales or



1 use tax resulting from the seller or certified service provider  
2 relying on erroneous data provided by the State on tax rates,  
3 boundaries, or taxing jurisdiction assignments.

4 **§255D-B Rounding rule.** For the purpose of calculating the  
5 amount of the sales or use tax:

6 (1) The tax computation shall be carried to the third  
7 decimal place; and

8 (2) The tax shall be rounded to a whole cent using a  
9 method that rounds up to the next cent whenever the  
10 third decimal place is greater than four.

11 Sellers may elect to compute the tax due on a transaction  
12 on an item or an invoice basis, and shall allow the rounding  
13 rule to be applied to the aggregated state and local taxes.

14 **§255D-C Amnesty for registration under this chapter.** (a)  
15 The department shall provide amnesty for uncollected or unpaid  
16 sales tax under chapter 237 or use tax under chapter 238,  
17 including any county surcharge, to a seller who registers to pay  
18 or to collect and remit applicable sales or use tax on  
19 transactions made to purchasers in the State in accordance with  
20 the terms of the streamlined sales and use tax agreement;  
21 provided that the seller was not so registered in the State in



1 the twelve-month period preceding the effective date of the  
2 State's participation in the streamlined sales and use tax  
3 agreement.

4 (b) The amnesty shall preclude assessment for uncollected  
5 or unpaid sales tax under chapter 237 or use tax under chapter  
6 238 together with penalty or interest for sales made during the  
7 period the seller was not registered in the State; provided  
8 registration occurs within twelve months of the effective date  
9 of the State's participation in the streamlined sales and use  
10 tax agreement.

11 (c) The amnesty shall not be available to a seller with  
12 respect to any matter or matters for which the seller received  
13 notice of the commencement of an audit and the audit is not yet  
14 finally resolved including any related administrative and  
15 judicial processes.

16 (d) The amnesty shall not be available for sales or use  
17 taxes already paid or remitted to the State or to taxes  
18 collected by the seller.

19 (e) The amnesty shall be fully effective, absent the  
20 seller's fraud or intentional misrepresentation of a material  
21 fact, as long as the seller continues registration and continues



1 payment or collection and remittance of applicable sales or use  
2 taxes for a period of at least thirty-six months. The statute  
3 of limitations is tolled with respect to asserting a tax  
4 liability during this thirty-six month period.

5 (f) The amnesty shall only apply to sales or use taxes due  
6 from a seller in its capacity as a seller and not to sales or  
7 use taxes due from a seller in its capacity as a buyer.

8 **§255D-D Local rate and boundary changes.** (a) Any rate  
9 changes by a local jurisdiction shall be effective only on the  
10 first day of a calendar quarter after a minimum of sixty days  
11 notice to sellers.

12 (b) Any local tax rate changes relating to purchases from  
13 printed catalogs wherein the purchaser computes the tax based  
14 upon local tax rates published in the catalog shall be effective  
15 only on the first day of a calendar quarter after a minimum of  
16 one hundred twenty days notice to sellers.

17 (c) For sales and use tax purposes only, local  
18 jurisdiction boundary changes apply only on the first day of a  
19 calendar quarter after a minimum of sixty days notice to  
20 sellers.





1        (d) The department shall provide and maintain a database  
2        that describes boundary changes for all taxing jurisdictions.  
3        The database shall include a description of the change and the  
4        effective date of the change for sales tax under chapter 237 and  
5        use tax under chapter 238 purposes.

6        (e) The department shall provide and maintain a database  
7        of all sales tax rates under chapter 237 and use tax rates under  
8        chapter 238 for all of the jurisdictions levying taxes within  
9        the State. For the identification of states, counties, and  
10       cities, codes corresponding to the rates shall be provided  
11       according to Federal Information Processing Standards as  
12       developed by the National Institute of Standards and Technology.  
13       For the identification of all other jurisdictions, codes  
14       corresponding to the rates shall be in the format determined by  
15       the Streamlined Sales Tax Governing Board, Incorporated.

16       (f) The department shall provide and maintain a database  
17       that assigns each five-digit and nine-digit zip code within the  
18       State to the proper tax rates and jurisdictions. The department  
19       shall apply the lowest combined tax rate imposed in the zip code  
20       area if the area includes more than one tax rate in any level of  
21       taxing jurisdictions. If a nine-digit zip code designation is



1 not available for a street address or if a seller or certified  
2 service provider is unable to determine the nine-digit zip code  
3 designation of a purchaser after exercising due diligence to  
4 determine the designation, the seller or certified service  
5 provider may apply the rate for the five-digit zip code area.  
6 For the purposes of this section, there is a rebuttable  
7 presumption that a seller or certified service provider has  
8 exercised due diligence if the seller has attempted to determine  
9 the nine-digit zip code designation by utilizing software  
10 approved by the Streamlined Sales Tax Governing Board,  
11 Incorporated, that makes this designation from the street  
12 address and the five-digit zip code of the purchaser.

13 (g) The State shall participate with other states in the  
14 development of an address-based system for assigning taxing  
15 jurisdictions. The system shall meet the requirements developed  
16 pursuant to the federal Mobile Telecommunications Sourcing Act  
17 (4 U.S.C. 116). If any state develops an address-based  
18 assignment system pursuant to the Mobile Telecommunications  
19 Sourcing Act, a seller may use that system in place of the  
20 system provided for in subsection (e).



1        **§255D-E Certified service provider; agent of the seller.**

2        (a) A certified service provider is the agent of a seller, with  
3 whom the certified service provider has contracted for the  
4 collection and remittance of sales and use taxes. As the  
5 seller's agent, the certified service provider is liable for  
6 sales and use tax due to the State on all sales transactions it  
7 processes for the seller unless the seller made a material  
8 misrepresentation or committed fraud.

9        (b) A seller that uses a certified automated system is  
10 responsible and is liable to the State for reporting and  
11 remitting tax.

12        **§255D-F Confidentiality of records.** (a) Except as

13 provided in subsection (c), a certified service provider shall  
14 not retain or disclose the personally identifiable information  
15 of consumers. A certified service provider's system shall be  
16 designed and tested to ensure the privacy of consumers by  
17 protecting their anonymity.

18        (b) A certified service provider shall provide clear and  
19 conspicuous notice of its information practices to consumers,  
20 including but not limited to what information it collects, how  
21 it collects the information, how it uses the information, how



1 long it retains the information, and whether it discloses the  
2 information to member states.

3 (c) A certified service provider's retention or disclosure  
4 to member states of personally identifiable information is  
5 limited to that required to ensure the validity of exemptions  
6 claimed because of a consumer's status or intended use of the  
7 goods or services purchased.

8 (d) A certified service provider shall provide the  
9 necessary technical, physical, and administrative safeguards to  
10 protect personally identifiable information from unauthorized  
11 access and disclosure.

12 (e) The privacy policy required under this section shall  
13 be subject to enforcement by the attorney general.

14 (f) If personally identifiable information is retained by  
15 the State for the purpose of subsection (c), in the absence of  
16 exigent circumstances, a person shall be afforded reasonable  
17 access to the person's own data, with a right to correct  
18 inaccurately recorded data.

19 (g) The agreement does not enlarge or limit the State's  
20 authority to do any of the following:



1        (1) Conduct audits or other reviews as provided under the  
2        agreement or the State's law;

3        (2) Provide records pursuant to chapter 92F, disclosure  
4        laws with governmental agencies, or other regulations;

5        (3) Prevent, consistent with the State's law, disclosures  
6        of confidential taxpayer information;

7        (4) Prevent, consistent with federal law, disclosures or  
8        misuse of federal return information obtained under a  
9        disclosure agreement with the Internal Revenue  
10       Service; or

11       (5) Collect, disclose, disseminate, or otherwise use  
12       anonymous data for governmental purposes.

13       (h) The department shall publish on the department's  
14       website the State's policy relating to the collection, use, and  
15       retention of personally identifiable information obtained from a  
16       certified service provider under subsection (c).

17       (i) The department shall destroy personally identifiable  
18       information obtained from a certified service provider when the  
19       information is no longer required for purposes under subsection  
20       (c).



1        (j) If a person other than a member state or person  
2 authorized by a member state's law or the agreement seeks to  
3 discover personally identifiable information about an individual  
4 from the State, the department shall make a reasonable and  
5 timely effort to notify that individual of the request.

6        (k) As used in this section, "personally identifiable  
7 information" means information that identifies a specific  
8 person.

9        **§255D-G Liability for uncollected tax.** (a) A seller  
10 registered under the agreement is not liable for any uncollected  
11 or nonremitted tax on transactions with purchasers in the State  
12 before the date of registration, if the seller was not licensed  
13 or registered under chapter 237 in the twelve-month period  
14 preceding the effective date of the State's participation in the  
15 agreement. The seller is also not responsible for any penalty  
16 or interest that may be due on those transactions. This  
17 subsection applies only if the seller is registered in this  
18 State within twelve months of the effective date of this State's  
19 participation in the agreement.

20        (b) Subsection (a) does not apply to:



1        (1) Any tax liability of the registered seller for  
2        transactions that are subject to sales or use tax in  
3        the State in which the registered seller is the  
4        purchaser;

5        (2) Any sales or use taxes already paid or remitted to the  
6        State or to taxes collected by the seller; and

7        (3) Any transactions for which the seller received notice  
8        of the commencement of an audit and the audit is not  
9        finally resolved, including related administrative or  
10       judicial processes.

11       (c) Subsection (a) applies to the seller absent the  
12       seller's fraud or intentional misrepresentation of a material  
13       fact, only if the seller continues to be registered under the  
14       agreement and continues collection and remittance of applicable  
15       sales and use taxes in the State for at least thirty-six months.  
16       The statute of limitations applicable to assessing a tax  
17       liability shall be tolled during the thirty-six-month period.

18       **§255D-H Rate changes.**    (a) The department shall publish  
19       on its website a notification to sellers registered under the  
20       agreement of a change in tax rate or tax base within five  
21       business days of receiving notice of the changes to the tax rate



1 or tax base or of an amendment to sales and use tax rules.

2 Whenever possible, a tax rate or tax base change should occur on  
3 the first day of a calendar quarter.

4 (b) The failure of a seller to receive notice under  
5 subsection (a) does not relieve the seller of its obligation to  
6 collect the sales or use tax.

7 (c) The department shall complete a taxability matrix as  
8 provided for under section 328 of the agreement, maintain it in  
9 a database in a downloadable format approved by the Streamlined  
10 Sales Tax Governing Board, Incorporated, and provide notice of  
11 changes in the matrix.

12 **§255D-I Customer refund procedures.** A cause of action  
13 against a seller for over-collected sales or use taxes does not  
14 accrue until sixty days after a purchaser has provided written  
15 notice to the seller. The purchaser shall provide sufficient  
16 information in the notice to determine the validity of the  
17 request. In matters relating to the request, a seller is  
18 presumed to have a reasonable business practice if, in the  
19 collection of sales or use tax, the seller has a certified  
20 service provider or a system, including a proprietary system,  
21 certified by the department, and has remitted to this State all





1 taxes collected, less any deductions, credits, or collection  
2 allowances."

3 SECTION 10. Section 237-3, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) "Gross income" means the gross receipts, cash or  
6 accrued, of the taxpayer received as compensation for personal  
7 services and the gross receipts of the taxpayer derived from  
8 trade, business, commerce, or sales and the value proceeding or  
9 accruing from the sale of tangible personal property, or  
10 service, or both, and all receipts, actual or accrued as  
11 hereinafter provided, by reason of the investment of the capital  
12 of the business engaged in, including interest, discount,  
13 rentals, royalties, fees, or other emoluments however designated  
14 and without any deductions on account of the cost of property  
15 sold, the cost of materials used, labor cost, taxes, royalties,  
16 interest, or discount paid or any other expenses whatsoever.  
17 Every taxpayer shall be presumed to be dealing on a cash basis  
18 unless the taxpayer proves to the satisfaction of the department  
19 of taxation that the taxpayer is dealing on an accrual basis and  
20 the taxpayer's books are so kept, or unless the taxpayer employs  
21 or is required to employ the accrual basis for the purposes of



1 the tax imposed by chapter 235 for any taxable year in which  
2 event the taxpayer shall report the taxpayer's gross income for  
3 the purposes of this chapter on the accrual basis for the same  
4 period.

5 "Gross proceeds of sale" means the [~~value actually~~  
6 ~~proceeding from the sale of tangible personal property without~~  
7 ~~any deduction on account of the cost of property sold or~~  
8 ~~expenses of any kind.] sales price."~~

9 SECTION 11. Section 237-8.6, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) The county surcharge on state tax, upon the adoption  
12 of county ordinances and in accordance with the requirements of  
13 section 46-16.8, shall be levied, assessed, and collected as  
14 provided in this section on all gross proceeds and gross income  
15 taxable under this chapter. No county shall set the surcharge  
16 on state tax at a rate greater than [~~one-half~~] 0.5 per cent of  
17 all gross proceeds and gross income taxable under this chapter.  
18 All provisions of this chapter shall apply to the county  
19 surcharge on state tax. With respect to the surcharge, the  
20 director of taxation shall have all the rights and powers  
21 provided under this chapter. No county shall conduct an



1 independent tax audit of sellers registered under the  
2 streamlined sales and use tax agreement. In addition, the  
3 director of taxation shall have the exclusive rights and power  
4 to determine the county or counties in which a person is engaged  
5 in business and, in the case of a person engaged in business in  
6 more than one county, the director shall determine, through  
7 apportionment or other means, that portion of the surcharge on  
8 state tax attributable to business conducted in each county."

9 SECTION 12. Section 237-9, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§237-9 Licenses; penalty.** (a) Except as provided in  
12 this section, any person who has a gross income or gross  
13 proceeds of sales or value of products upon which a privilege  
14 tax is imposed by this chapter, as a condition precedent to  
15 engaging or continuing in [~~such~~] the business, shall in writing  
16 apply for and obtain from the department of taxation, upon a  
17 one-time payment of the sum of \$20, a license to engage in and  
18 to conduct [~~such~~] the business, upon condition that the person  
19 shall pay the taxes accruing to the State under this chapter,  
20 and the person shall thereby be duly licensed to engage in and  
21 conduct the business. The license shall not be transferable and



1 shall be valid only for the person in whose name it is issued  
2 and for the transaction of business at the place designated  
3 therein. The license may be inspected and examined, and shall  
4 at all times be conspicuously displayed at the place for which  
5 it is issued.

6 A seller registered under the streamlined sales and use tax  
7 agreement who is not otherwise obligated to obtain a license in  
8 the State is not required to obtain a license because of that  
9 registration.

10 (b) Licenses and applications therefor shall be in [~~such~~]  
11 the form as the department shall prescribe, except that where  
12 the licensee is engaged in two or more forms of business of  
13 different classification, the license shall so state on its  
14 face. The license provided for by this section shall be  
15 effective until canceled in writing. Any application for the  
16 reissuance of a previously canceled license identification  
17 number after December 31, 1989, shall be regarded as a new  
18 license application and subject to the payment of the one-time  
19 license fee of \$20. The director may revoke or cancel any  
20 license issued under this chapter for cause as provided by rules  
21 adopted pursuant to chapter 91.



1 (c) Any person who receives gross income or gross proceeds  
2 of sales or value of products from engaging in business in the  
3 State and who fails to obtain a license or receives gross income  
4 or gross proceeds of sales or value of products from engaging in  
5 business in the State without a license required under this  
6 section may be fined not more than \$500; provided that a cash-  
7 based business may be fined not less than \$500 and not more than  
8 \$2,000, as determined by the director or the director's  
9 designee. The penalty under this subsection shall be in  
10 addition to any other penalty provided under law and may be  
11 waived or canceled upon a showing of good cause.

12 (d) If the license fee is paid, the department shall not  
13 refuse to issue a license or revoke or cancel a license for the  
14 exercise of a privilege protected by the First Amendment of the  
15 Constitution of the United States, or for the carrying on of  
16 interstate or foreign commerce, or for any privilege the  
17 exercise of which, under the Constitution and laws of the United  
18 States, cannot be restrained on account of nonpayment of taxes,  
19 nor shall section 237-46 be invoked to restrain the exercise of  
20 ~~[such]~~ a privilege, or the carrying on of ~~[such]~~ interstate or  
21 foreign commerce.



1           (e) The director may permit a person engaged in network  
2 marketing, multi-level marketing, or other similar business to  
3 obtain the license required under this section for purposes of  
4 becoming a tax collection agent on behalf of its direct sellers.  
5 The tax collection agent shall report, collect, and pay over the  
6 taxes due under this chapter and chapter 238 on behalf of its  
7 direct sellers who are covered by the tax collection agreement.  
8 The tax collection agent's direct sellers shall be deemed to be  
9 licensed under this chapter; provided that the licensure shall  
10 apply solely to the business activity conducted directly through  
11 the marketing arrangement. Under this section, a tax collection  
12 agent shall:

13           (1) Notify all of its direct sellers making sales in the  
14 State that it has been designated to collect, report,  
15 and pay over the tax imposed by this chapter and  
16 chapter 238 on their behalf on the business activity  
17 conducted through the marketing arrangement;

18           (2) If required by the director as a condition of  
19 obtaining the license, furnish with the annual return,  
20 a list (including identification numbers) of all  
21 direct sellers for the taxable year who have been



1 provided (by the tax collection agent) information  
2 returns required under section 6041A (with respect to  
3 returns regarding payments of remuneration for  
4 services and direct sales) of the Internal Revenue  
5 Code [~~of 1986, as amended,~~] and any other information  
6 that is relevant to ensure proper payment of taxes due  
7 under this section; and

8 (3) Be personally liable for the taxes due and collected  
9 under the tax collection agreement if taxes are  
10 collected, but not reported or paid, together with  
11 penalties and interest as provided by law.

12 (f) The director may authorize a person to assume the  
13 obligation of self-accruing and remitting tax due on purchases  
14 or leases or rentals directly to the department under a direct  
15 payment authorization, if the following conditions are met:

16 (1) The authorization is to be used for the purchase or  
17 lease of tangible personal property or services;

18 (2) The authorization is necessary because it is either  
19 impractical at the time of acquisition to determine  
20 the manner in which the tangible personal property or



1 services will be used or it will facilitate improved  
2 compliance with the tax laws of the State; and

3 (3) The person requesting authorization for direct payment  
4 maintains accurate and complete records of all  
5 purchases or leases and uses of tangible personal  
6 property or services purchased pursuant to the direct  
7 payment authorization in a form acceptable to the  
8 department.

9 The department may identify items that are not eligible for  
10 a direct payment authorization.

11 ~~[(f)]~~ (g) For the purposes of this section:

12 "Cash-based business" has the same meaning as in section  
13 231-93.

14 "Consumer product" shall include tangible consumer products  
15 and intangible consumer services.

16 "Direct seller" means any person who is engaged in the  
17 trade or business of selling (or soliciting the sale of)  
18 consumer products:

19 (1) To any buyer on a buy-sell basis, a deposit-commission  
20 basis, or any similar basis, that the director





1 prescribes by rule adopted pursuant to chapter 91, for  
2 resale other than in a permanent retail establishment;

3 (2) Other than in a permanent retail establishment;  
4 provided that:

5 (A) Substantially all the remuneration (whether or  
6 not paid in cash) for the sale of consumer  
7 products is directly related to sales or other  
8 output rather than to the number of hours worked;  
9 and

10 (B) The sales of consumer products by the person are  
11 performed pursuant to a written contract that  
12 provides that the person will not be treated as  
13 an employee with respect to those sales for  
14 federal or state tax purposes.

15 "Direct seller" includes individuals who realize  
16 remuneration dependent on the productivity of other individuals  
17 in the marketing arrangement.

18 "Network marketing" or "multi-level marketing" means a  
19 marketing arrangement in which consumer products are distributed  
20 and sold to or through direct sellers."



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

3       "**§237-13 Imposition of tax.** There is hereby levied and  
4 shall be assessed and collected annually privilege taxes against  
5 persons on account of their business and other activities in the  
6 State measured by the application of rates against values of  
7 products, gross proceeds of sales, or gross income, whichever is  
8 specified, as follows:

9       ~~[(1) Tax on manufacturers.~~

10       ~~(A) Upon every person engaging or continuing within~~  
11       ~~the State in the business of manufacturing,~~  
12       ~~including compounding, canning, preserving,~~  
13       ~~packing, printing, publishing, milling,~~  
14       ~~processing, refining, or preparing for sale,~~  
15       ~~profit, or commercial use, either directly or~~  
16       ~~through the activity of others, in whole or in~~  
17       ~~part, any article or articles, substance or~~  
18       ~~substances, commodity or commodities, the amount~~  
19       ~~of the tax to be equal to the value of the~~  
20       ~~articles, substances, or commodities,~~  
21       ~~manufactured, compounded, canned, preserved,~~



1                   ~~packed, printed, milled, processed, refined, or~~  
2                   ~~prepared for sale, as shown by the gross proceeds~~  
3                   ~~derived from the sale thereof by the manufacturer~~  
4                   ~~or person compounding, preparing, or printing~~  
5                   ~~them, multiplied by one-half of one per cent.~~

6           ~~(B) The measure of the tax on manufacturers is the~~  
7           ~~value of the entire product for sale, regardless~~  
8           ~~of the place of sale or the fact that deliveries~~  
9           ~~may be made to points outside the State.~~

10          ~~(C) If any person liable for the tax on manufacturers~~  
11          ~~ships or transports the person's product, or any~~  
12          ~~part thereof, out of the State, whether in a~~  
13          ~~finished or unfinished condition, or sells the~~  
14          ~~same for delivery to points outside the State~~  
15          ~~(for example, consigned to a mainland purchaser~~  
16          ~~via common carrier f.o.b. Honolulu), the value of~~  
17          ~~the products in the condition or form in which~~  
18          ~~they exist immediately before entering interstate~~  
19          ~~or foreign commerce, determined as hereinafter~~  
20          ~~provided, shall be the basis for the assessment~~  
21          ~~of the tax imposed by this paragraph. This tax~~



1 ~~shall be due and payable as of the date of entry~~  
2 ~~of the products into interstate or foreign~~  
3 ~~commerce, whether the products are then sold or~~  
4 ~~not. The department shall determine the basis~~  
5 ~~for assessment, as provided by this paragraph, as~~  
6 ~~follows:~~

- 7 ~~(i) If the products at the time of their entry~~  
8 ~~into interstate or foreign commerce already~~  
9 ~~have been sold, the gross proceeds of sale,~~  
10 ~~less the transportation expenses, if any,~~  
11 ~~incurred in realizing the gross proceeds for~~  
12 ~~transportation from the time of entry of the~~  
13 ~~products into interstate or foreign~~  
14 ~~commerce, including insurance and storage in~~  
15 ~~transit, shall be the measure of the value~~  
16 ~~of the products;~~
- 17 ~~(ii) If the products have not been sold at the~~  
18 ~~time of their entry into interstate or~~  
19 ~~foreign commerce, and in cases governed by~~  
20 ~~clause (i) in which the products are sold~~  
21 ~~under circumstances such that the gross~~



1 ~~proceeds of sale are not indicative of the~~  
2 ~~true value of the products, the value of the~~  
3 ~~products constituting the basis for~~  
4 ~~assessment shall correspond as nearly as~~  
5 ~~possible to the gross proceeds of sales for~~  
6 ~~delivery outside the State, adjusted as~~  
7 ~~provided in clause (i), or if sufficient~~  
8 ~~data are not available, sales in the State,~~  
9 ~~of similar products of like quality and~~  
10 ~~character and in similar quantities, made by~~  
11 ~~the taxpayer (unless not indicative of the~~  
12 ~~true value) or by others. Sales outside the~~  
13 ~~State, adjusted as provided in clause (i),~~  
14 ~~may be considered when they constitute the~~  
15 ~~best available data. The department shall~~  
16 ~~prescribe uniform and equitable rules for~~  
17 ~~ascertaining the values;~~

18 ~~(iii) At the election of the taxpayer and with the~~  
19 ~~approval of the department, the taxpayer may~~  
20 ~~make the taxpayer's returns under clause (i)~~  
21 ~~even though the products have not been sold~~



1 ~~at the time of their entry into interstate~~

2 ~~or foreign commerce; and~~

3 ~~(iv) In all cases in which products leave the~~

4 ~~State in an unfinished condition, the basis~~

5 ~~for assessment shall be adjusted so as to~~

6 ~~deduct the portion of the value as is~~

7 ~~attributable to the finishing of the goods~~

8 ~~outside the State.~~

9 ~~(2)]~~ (1) Tax on business of selling tangible personal

10 property[~~; producing.~~]:

11 (A) Upon every person engaging or continuing in the

12 business of selling any tangible personal

13 property [whatsoever] (not including, however,

14 bonds or other evidence of indebtedness, or

15 stocks), unless subject to chapter A, there is

16 [likewise] hereby levied, and shall be assessed

17 and collected, a tax equivalent to [four] 4 per

18 cent of the gross proceeds of sales of the

19 business; [~~provided that, in the case of a~~

20 ~~wholesaler, the tax shall be equal to one-half of~~

21 ~~one per cent of the gross proceeds of sales of~~



~~the business; and provided further that insofar as the sale of tangible personal property is a wholesale sale under section 237-4(a)(8), the sale shall be subject to section 237-13.3. Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).]~~

(B) Gross proceeds of sales of tangible property, unless subject to chapter A, in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the



1 Constitution of the United States and the Acts of  
2 the Congress of the United States [~~which~~] that  
3 may be now in force or may be hereafter adopted,  
4 and whenever there occurs in the State an  
5 activity to which, under the Constitution and  
6 Acts of Congress, there may be attributed gross  
7 proceeds of sales, the gross proceeds shall be so  
8 attributed[~~-~~

9 ~~(C) No manufacturer or producer, engaged in such~~  
10 ~~business in the State and selling the~~  
11 ~~manufacturer's or producer's products for~~  
12 ~~delivery outside of the State (for example,~~  
13 ~~consigned to a mainland purchaser via common~~  
14 ~~carrier f.o.b. Honolulu), shall be required to~~  
15 ~~pay the tax imposed in this chapter for the~~  
16 ~~privilege of so selling the products, and the~~  
17 ~~value or gross proceeds of sales of the products~~  
18 ~~shall be included only in determining the measure~~  
19 ~~of the tax imposed upon the manufacturer or~~  
20 ~~producer.];~~





1           ~~[(D)]~~    (C)   When a manufacturer or a producer~~[7]~~ as  
2                   defined under section A-3, engaged in ~~[such]~~ the  
3                   business of manufacturing or producing in the  
4                   State, also is engaged in selling the  
5                   manufacturer's or producer's products in the  
6                   State at wholesale~~[7]~~ and taxed under chapter A,  
7                   retail, or in any other manner, the tax for the  
8                   privilege of engaging in the business of selling  
9                   the products in the State shall apply to the  
10                  manufacturer or producer as well as the tax for  
11                  the privilege of manufacturing or producing in  
12                  the State, and the manufacturer or producer shall  
13                  make the returns of the gross proceeds of the  
14                  wholesale, retail, or other sales required for  
15                  the privilege of selling in the State, as well as  
16                  making the returns of the value or gross proceeds  
17                  of sales of the products required for the  
18                  privilege of manufacturing or producing in the  
19                  State. The manufacturer or producer shall pay  
20                  the tax imposed in this chapter for the privilege  
21                  of selling its products in the State, and the



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

13 ~~[(+E)]~~ (D) A taxpayer selling to a federal cost-plus  
14 contractor may make the election provided for by  
15 paragraph ~~[(+3)(C)+]~~ (2)(C), and in that case the  
16 tax shall 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-]~~ (2) 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]~~ 4 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



1 contractor so much thereof as fulfills the  
2 following requirements:

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

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

17 (D) A person who, as a business or as a part of a  
18 business in which the person is engaged, erects,  
19 constructs, or improves any building or  
20 structure, of any kind or description, or makes,  
21 constructs, or improves any road, street,



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



1 sidewalk, sewer, or water system, or other  
2 improvements. The measure of tax in respect of  
3 the improvements shall not exceed the amount  
4 ~~[which]~~ that would have been taxable had the work  
5 been performed by another, subject as in other  
6 cases to the deductions allowed by subparagraph  
7 (B). Upon the election of the taxpayer, this  
8 paragraph may be applied notwithstanding that the  
9 improvements were not made by the taxpayer, or  
10 were not made as a business or as a part of a  
11 business, or were made with the intention of  
12 holding the same. However, this paragraph shall  
13 not apply in respect of any proceeds that  
14 constitute or are in the nature of rent; all  
15 ~~[such]~~ gross income shall be taxable under  
16 paragraph ~~[(9)]~~ (6); provided that insofar as  
17 the business of renting or leasing real property  
18 under a lease is taxed under section 237-16.5,  
19 the tax shall be levied by section 237-16.5~~[-]~~;  
20 ~~[(4)]~~ (3) Tax upon theaters, amusements, radio broadcasting  
21 stations, etc.



1           ~~[(A)]~~ Upon every person engaging or continuing within  
2           the State in the business of operating a theater,  
3           opera house, moving picture show, vaudeville,  
4           amusement park, dance hall, skating rink, radio  
5           broadcasting station, or any other place at which  
6           amusements are offered to the public, unless  
7           taxed under section A-6, the tax shall be equal  
8           to ~~[four]~~ 4 per cent of the gross income of the  
9           business ~~[, and in the case of a sale of an~~  
10          ~~amusement at wholesale under section 237-~~  
11          ~~4(a)(13), the tax shall be subject to section~~  
12          ~~237-13.3.~~

13          ~~(B) The department may require that the person~~  
14          ~~rendering an amusement at wholesale take from the~~  
15          ~~licensed seller a certificate, in a form~~  
16          ~~prescribed by the department, certifying that the~~  
17          ~~sale is a sale at wholesale; provided that:~~

18          ~~(i) Any licensed seller who furnishes a~~  
19                 ~~certificate shall be obligated to pay to the~~  
20                 ~~person rendering the amusement, upon demand,~~  
21                 ~~the amount of additional tax that is imposed~~





1                   ~~upon the seller whenever the sale is not at~~  
2                   ~~wholesale; and~~

3                   ~~(ii) The absence of a certificate in itself shall~~  
4                   ~~give rise to the presumption that the sale~~  
5                   ~~is not at wholesale unless the person~~  
6                   ~~rendering the sale is exclusively rendering~~  
7                   ~~the amusement at wholesale.];~~

8                   [~~(5)~~] (4) Tax upon sales representatives, etc. Upon every  
9                   person classified as a representative or purchasing  
10                  agent under section 237-1, engaging or continuing  
11                  within the State in the business of performing  
12                  services for another, other than as an employee, there  
13                  is likewise hereby levied and shall be assessed and  
14                  collected a tax equal to [~~four~~] 4 per cent of the  
15                  commissions and other compensation attributable to the  
16                  services so rendered by the person~~[-]~~, unless taxable  
17                  under chapter A or C;

18                  [~~(6)~~] (5) Tax on service business~~[-]~~:

19                  (A) Upon every person engaging or continuing within  
20                  the State in any service business or calling  
21                  including professional services not otherwise



1 specifically taxed under this chapter, chapter A,  
2 or chapter C, there is likewise hereby levied and  
3 shall be assessed and collected a tax equal to  
4 [~~four~~] 4 per cent of the gross income of the  
5 business[, and in the case of a wholesaler under  
6 section 237-4(a)(10), the tax shall be equal to  
7 one-half of one per cent of the gross income of  
8 the business. Notwithstanding the foregoing, a  
9 wholesaler under section 237-4(a)(10) shall be  
10 subject to section 237-13.3.

11 ~~(B) The department may require that the person~~  
12 ~~rendering a service at wholesale take from the~~  
13 ~~licensed seller a certificate, in a form~~  
14 ~~prescribed by the department, certifying that the~~  
15 ~~sale is a sale at wholesale; provided that:~~

16 ~~(i) Any licensed seller who furnishes a~~  
17 ~~certificate shall be obligated to pay to the~~  
18 ~~person rendering the service, upon demand,~~  
19 ~~the amount of additional tax that is imposed~~  
20 ~~upon the seller whenever the sale is not at~~  
21 ~~wholesale; and~~



1           ~~(ii) The absence of a certificate in itself shall~~  
2           ~~give rise to the presumption that the sale~~  
3           ~~is not at wholesale unless the person~~  
4           ~~rendering the sale is exclusively rendering~~  
5           ~~services at wholesale.];~~

6           [~~(C)~~]   (B)   Where any person is engaged in the business  
7           of selling interstate or foreign common carrier  
8           [~~telecommunication~~] telecommunications services  
9           within and without the State, other than as a  
10          home service provider, the tax shall be imposed  
11          on that portion of gross income received by a  
12          person from service [~~which~~] that is originated or  
13          terminated in this State and is charged to a  
14          telephone number, customer, or account in this  
15          State notwithstanding any other state law (except  
16          for the exemption under section 237-23(a)(1)) to  
17          the contrary. If, under the Constitution and  
18          laws of the United States, the entire gross  
19          income as determined under this paragraph of a  
20          business selling interstate or foreign common  
21          carrier [~~telecommunication~~] telecommunications



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1 services cannot be included in the measure of the  
2 tax, the gross income shall be apportioned as  
3 provided in section 237-21; provided that the  
4 apportionment factor and formula shall be the  
5 same for all persons providing those services in  
6 the State~~[-]~~;

7 ~~[(D)]~~ (C) Where any person is engaged in the business  
8 of a home service provider, the tax shall be  
9 imposed on the gross income received or derived  
10 from providing interstate or foreign mobile  
11 telecommunications services to a customer with a  
12 place of primary use in this State when ~~[such]~~  
13 the services originate in one state and terminate  
14 in another state, territory, or foreign country;  
15 provided that all charges for mobile  
16 telecommunications services ~~[which]~~ that are  
17 billed by or for the home service provider are  
18 deemed to be provided by the home service  
19 provider at the customer's place of primary use,  
20 regardless of where the mobile telecommunications  
21 originate, terminate, or pass through; provided



1 further that the income from charges specifically  
2 derived from interstate or foreign mobile  
3 telecommunications services, as determined by  
4 books and records that are kept in the regular  
5 course of business by the home service provider  
6 in accordance with section 239-24, shall be  
7 apportioned under any apportionment factor or  
8 formula adopted under subparagraph ~~[(C)-]~~ (B).

9 Gross income shall not include:

10 (i) Gross receipts from mobile  
11 telecommunications services provided to a  
12 customer with a place of primary use outside  
13 this State;

14 (ii) Gross receipts from mobile  
15 telecommunications services that are subject  
16 to the tax imposed by chapter 239;

17 (iii) Gross receipts from mobile  
18 telecommunications services taxed under  
19 section 237-13.8; and

20 (iv) Gross receipts of a home service provider  
21 acting as a serving carrier providing mobile



1 telecommunications services to another home  
2 service provider's customer.

3 For the purposes of this paragraph, [~~"charges for~~  
4 ~~mobile telecommunications services",~~] "customer",  
5 "home service provider", "mobile  
6 telecommunications services", and "place of  
7 primary use" [~~, and "serving carrier"~~] have the  
8 same meaning as in section [~~239-22.~~] 237-D and  
9 "charges for mobile telecommunications services"  
10 and "serving carrier" have the same meaning as in  
11 section 239-22; and

12 [~~(7) Tax on insurance producers. Upon every person engaged~~  
13 ~~as a licensed producer pursuant to chapter 431, there~~  
14 ~~is hereby levied and shall be assessed and collected a~~  
15 ~~tax equal to 0.15 per cent of the commissions due to~~  
16 ~~that activity.~~

17 ~~(8) Tax on receipts of sugar benefit payments. Upon the~~  
18 ~~amounts received from the United States government by~~  
19 ~~any producer of sugar (or the producer's legal~~  
20 ~~representative or heirs), as defined under and by~~  
21 ~~virtue of the Sugar Act of 1948, as amended, or other~~



~~Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.~~

~~(9)]~~ (6) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to ~~[four]~~ 4 per cent of the gross income



1           thereof. In addition, the rate prescribed by this  
2           paragraph shall apply to a business taxable under one  
3           or more of the preceding paragraphs or other  
4           provisions of this chapter, as to any gross income  
5           thereof not taxed thereunder as gross income or gross  
6           proceeds of sales or by taxing an equivalent value of  
7           products, unless specifically exempted~~[=]~~ or subject  
8           to taxation under chapter A or C."

9           SECTION 14. Section 237-13.8, Hawaii Revised Statutes, is  
10          amended by amending subsection (c) to read as follows:

11          "(c) When a person licensed under this chapter sells  
12          prepaid telephone calling services to a licensed retail  
13          merchant, jobber, or other licensed seller for purposes of  
14          resale, the person shall be taxed as a wholesaler selling  
15          tangible personal property~~[=]~~ under section A-13. All other  
16          sales of prepaid telephone calling services shall be taxed as  
17          retail sales of tangible personal property."

18          SECTION 15. Section 237-18, Hawaii Revised Statutes, is  
19          amended to read as follows:

20          "**§237-18 Further provisions as to application of tax.** (a)

21          Where a coin operated device produces gross income which is





1 divided between the owner or operator of the device, on the one  
2 hand, and the owner or operator of the premises where the device  
3 is located, on the other hand, the tax imposed by this chapter  
4 shall apply to each [~~such~~] person with respect to the person's  
5 portion of the proceeds, and no more.

6 (b) Where gate receipts or other admissions are divided  
7 between the person furnishing or producing a play, concert,  
8 lecture, athletic event, or similar spectacle (including any  
9 motion picture showing) on the one hand, and a promoter  
10 (including any proprietor or other operator of a motion picture  
11 house) offering the spectacle to the public, on the other hand,  
12 the tax imposed by this chapter, if the promoter is subject to  
13 the tax imposed by this chapter, shall apply only to the  
14 promoter measured by the whole of the proceeds, and the promoter  
15 shall be authorized to deduct and withhold from the portion of  
16 the proceeds payable to the person furnishing or producing the  
17 spectacle the amount of the tax payable by the person upon  
18 [~~such~~] the portion. No tax shall apply to a promoter with  
19 respect to [~~such~~] the portion of the proceeds as is payable to a  
20 person furnishing or producing the spectacle, who is exempted by  
21 section 237-23 from taxation upon [~~such~~] the activity.



1       ~~[(c) Where, through the activity of a person taxable under~~  
2       ~~section 237-13(6), a product has been milled, processed, or~~  
3       ~~otherwise manufactured upon the order of another taxpayer who is~~  
4       ~~a manufacturer taxable upon the value of the entire manufactured~~  
5       ~~products, which consists in part of the value of the services~~  
6       ~~taxable under section 237-13(6), so much gross income as is~~  
7       ~~derived from the rendering of the services shall be subjected to~~  
8       ~~tax on the person rendering the services at the rate of one-half~~  
9       ~~of one per cent, and the value of the entire product shall be~~  
10       ~~included in the measure of the tax imposed on the other taxpayer~~  
11       ~~as elsewhere provided.~~

12       ~~(d) Where, through the activity of a person taxable under~~  
13       ~~section 237-13(6), there have been rendered to a cane planter~~  
14       ~~services consisting in the harvesting or hauling of the cane, or~~  
15       ~~consisting in road maintenance, under a contract between the~~  
16       ~~person rendering the services and the cane planter, covering the~~  
17       ~~services and also the milling of the sugar, the services of~~  
18       ~~harvesting and hauling the cane and road maintenance shall be~~  
19       ~~treated the same as the service of milling the cane, as provided~~  
20       ~~by subsection (c), and the value of the entire product,~~  
21       ~~manufactured or sold for the cane planter under the contract,~~



1 ~~shall be included in the measure of the tax imposed on the~~  
2 ~~person as elsewhere provided.~~

3 ~~(e)]~~ (c) Where ~~[insurance agents, including general~~  
4 ~~agents, subagents, or solicitors, who are not employees and are~~  
5 ~~licensed pursuant to chapter 431, or]~~ real estate brokers or  
6 salespersons, who are not employees and are licensed pursuant to  
7 chapter 467, produce commissions ~~[which]~~ that are divided  
8 between ~~[such general agents, subagents, or solicitors, or~~  
9 ~~between such]~~ real estate brokers or salespersons, ~~[as the case~~  
10 ~~may be,]~~ the tax levied under section ~~[237-13(6)]~~ 237-13(5) as  
11 to real estate brokers or salespersons~~[, or under section 237-~~  
12 ~~13(7) as to insurance general agents, subagents, or solicitors]~~  
13 shall apply to each ~~[such]~~ person with respect to the person's  
14 portion of the commissions, and no more.

15 ~~[(f)]~~ (d) Where tourism related services are furnished  
16 through arrangements made by a travel agency or tour packager  
17 and the gross income is divided between the provider of the  
18 services and the travel agency or tour packager, the tax imposed  
19 by this chapter shall apply to each ~~[such]~~ person with respect  
20 to ~~[such]~~ the person's respective portion of the proceeds, and  
21 no more.



1       As used in this subsection "tourism related services" means  
2 catamaran cruises, canoe rides, dinner cruises, lei greetings,  
3 transportation included in a tour package, sightseeing tours not  
4 subject to chapter 239, admissions to luaus, dinner shows,  
5 extravaganzas, cultural and educational facilities, and other  
6 services rendered directly to the customer or tourist, but only  
7 if the providers of the services other than air transportation  
8 are subject to a [~~four~~] 4 per cent tax under this chapter or  
9 chapter 239.

10       [~~(g)~~] (e) Where transient accommodations are furnished  
11 through arrangements made by a travel agency or tour packager at  
12 noncommissioned negotiated contract rates and the gross income  
13 is divided between the operator of transient accommodations on  
14 the one hand and the travel agency or tour packager on the other  
15 hand, the tax imposed by this chapter shall apply to each [~~such~~]  
16 person with respect to [~~such~~] the person's respective portion of  
17 the proceeds, and no more.

18       As used in this subsection, the words "transient  
19 accommodations" and "operator" shall be defined in the same  
20 manner as they are defined in section 237D-1.



1        [~~(h)~~] (f) Where the transportation of passengers or  
2 property is furnished through arrangements between motor  
3 carriers, and the gross income is divided between the motor  
4 carriers, any tax imposed by this chapter shall apply to each  
5 motor carrier with respect to each motor carrier's respective  
6 portion of the proceeds.

7        As used in this subsection:

8        "Carrier" means a person who engages in transportation, and  
9 does not include a person such as a freight forwarder or tour  
10 packager who provides transportation by contracting with others,  
11 except to the extent that [~~such~~] the person [~~oneself~~] engages in  
12 transportation.

13        "Contract carrier" means a person other than a public  
14 utility as defined under section 239-2 or taxicab, [~~which~~] that  
15 under contracts or agreements, engages in the transportation of  
16 persons or property for compensation, by land, water, or air.

17        "Motor carrier" means a common carrier or contract carrier  
18 transporting persons or property for compensation on the public  
19 highways, other than a public utility as defined under section  
20 239-2 or taxicab.



1 "Public highways" has the meaning defined by section 264-1  
2 including both state and county highways, but operation upon  
3 rails shall not be deemed transportation on the public  
4 highways."

5 SECTION 16. Section 237-21, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 **"§237-21 Apportionment.** If any person~~[, other than~~  
8 ~~persons liable to the tax on manufacturers as provided by~~  
9 ~~section 237-13(1),]~~ is engaged in business both within and  
10 without the State or in selling goods for delivery outside the  
11 State, and if under the Constitution or laws of the United  
12 States or section 237-29.5 the entire gross income of ~~[such]~~ the  
13 person cannot be included in the measure of this tax, there  
14 shall be apportioned to the State and included in the measure of  
15 the tax that portion of the gross income ~~[which]~~ that is derived  
16 from activities within the State, to the extent that the  
17 apportionment is required by the Constitution or laws of the  
18 United States or section 237-29.5. ~~[In the case of a tax upon~~  
19 ~~the production of property in the State the apportionment shall~~  
20 ~~be determined as in the case of the tax on manufacturers.]~~ In  
21 other cases, if and to the extent that the apportionment cannot



1 be accurately made by separate accounting methods, there shall  
2 be apportioned to the State and included in the measure of this  
3 tax that proportion of the total gross income, so requiring  
4 apportionment, which the cost of doing business within the  
5 State, applicable to the gross income, bears to the cost of  
6 doing business both within and without the State, applicable to  
7 the gross income."

8 SECTION 17. Section 237-24, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§237-24 Amounts not taxable.** This chapter shall not  
11 apply to the following amounts:

- 12 (1) Amounts received under life insurance policies and  
13 contracts paid by reason of the death of the insured;
- 14 (2) Amounts received (other than amounts paid by reason of  
15 death of the insured) under life insurance, endowment,  
16 or annuity contracts, either during the term or at  
17 maturity or upon surrender of the contract;
- 18 (3) Amounts received under any accident insurance or  
19 health insurance policy or contract or under workers'  
20 compensation acts or employers' liability acts, as  
21 compensation for personal injuries, death, or



1 sickness, including also the amount of any damages or  
2 other compensation received, whether as a result of  
3 action or by private agreement between the parties on  
4 account of the personal injuries, death, or sickness;

5 (4) The value of all property of every kind and sort  
6 acquired by gift, bequest, or devise, and the value of  
7 all property acquired by descent or inheritance;

8 (5) Amounts received by any person as compensatory damages  
9 for any tort injury to the person, or to the person's  
10 character reputation, or received as compensatory  
11 damages for any tort injury to or destruction of  
12 property, whether as the result of action or by  
13 private agreement between the parties (provided that  
14 amounts received as punitive damages for tort injury  
15 or breach of contract injury shall be included in  
16 gross income);

17 (6) Amounts received as salaries or wages for services  
18 rendered by an employee to an employer;

19 (7) Amounts received as alimony and other similar payments  
20 and settlements;





1 (8) Amounts collected by distributors as fuel taxes on  
2 "liquid fuel" imposed by chapter 243, and the amounts  
3 collected by ~~[such]~~ the distributors as a fuel tax  
4 imposed by any Act of the Congress of the United  
5 States;

6 (9) Taxes on liquor imposed by chapter 244D on dealers  
7 holding permits under that chapter;

8 ~~[(10) The amounts of taxes on cigarettes and tobacco~~  
9 ~~products imposed by chapter 245 on wholesalers or~~  
10 ~~dealers holding licenses under that chapter and~~  
11 ~~selling the products at wholesale;~~

12 ~~[(11)]~~ (10) Federal excise taxes imposed on articles sold at  
13 retail and collected from the purchasers thereof and  
14 paid to the federal government by the retailer;

15 ~~[(12) The amounts of federal taxes under chapter 37 of the~~  
16 ~~Internal Revenue Code, or similar federal taxes,~~  
17 ~~imposed on sugar manufactured in the State, paid by~~  
18 ~~the manufacturer to the federal government;~~

19 ~~[(13) An amount up to, but not in excess of, \$2,000 a year~~  
20 ~~of gross income]~~



1        (11)    Amounts received by any blind, deaf, or totally  
2                    disabled person engaging, or continuing, in any  
3                    business, trade, activity, occupation, or calling  
4                    within the State; a corporation all of whose  
5                    outstanding shares are owned by an individual or  
6                    individuals who are blind, deaf, or totally disabled;  
7                    a general, limited, or limited liability partnership,  
8                    all of whose partners are blind, deaf, or totally  
9                    disabled; or a limited liability company, all of whose  
10                   members are blind, deaf, or totally disabled;

11        ~~[(14)]    Amounts received by a producer of sugarcane from the~~  
12                   ~~manufacturer to whom the producer sells the sugarcane,~~  
13                   ~~where:~~

14        ~~(A)    The producer is an independent cane farmer, so~~  
15                   ~~classified by the Secretary of Agriculture under the~~  
16                   ~~Sugar Act of 1948 (61 Stat. 922, chapter 519) as~~  
17                   ~~the Act may be amended or supplemented;~~

18        ~~(B)    The value or gross proceeds of the sale of the~~  
19                   ~~sugar, and other products manufactured from the~~  
20                   ~~sugarcane, are included in the measure of the tax~~



1 ~~levied on the manufacturer under section 237-~~

2 ~~13(1) or (2);~~

3 ~~(C) The producer's gross proceeds of sales are~~  
4 ~~dependent upon the actual value of the products~~  
5 ~~manufactured therefrom or the average value of~~  
6 ~~all similar products manufactured by the~~  
7 ~~manufacturer; and~~

8 ~~(D) The producer's gross proceeds of sales are~~  
9 ~~reduced by reason of the tax on the value or sale~~  
10 ~~of the manufactured products;~~

11 ~~(15)]~~ (12) Money paid by the State or eleemosynary child-  
12 placing organizations to foster parents for their care  
13 of children in foster homes;

14 ~~(16)]~~ (13) Amounts received by a cooperative housing  
15 corporation from its shareholders in reimbursement of  
16 funds paid by the corporation for lease rental, real  
17 property taxes, and other expenses of operating and  
18 maintaining the cooperative land and improvements;  
19 provided that the cooperative corporation is a  
20 corporation:



1 (A) Having one and only one class of stock

2 outstanding;

3 (B) Each of the stockholders of which is entitled

4 solely by reason of the stockholder's ownership

5 of stock in the corporation, to occupy for

6 dwelling purposes a house, or an apartment in a

7 building owned or leased by the corporation; and

8 (C) No stockholder of which is entitled (either

9 conditionally or unconditionally) to receive any

10 distribution not out of earnings and profits of

11 the corporation except in a complete or partial

12 liquidation of the corporation;

13 [~~(17)~~] (14) Amounts received by a managed care support

14 contractor of the TRICARE program that is established

15 under title 10 United States Code chapter 55, as

16 amended, for the actual cost or advancement to third

17 party health care providers pursuant to a contract

18 with the United States; and

19 [~~(18)~~] (15) Amounts received by a contractor of the Patient-

20 Centered Community Care program that is established by

21 the United States Department of Veterans Affairs



1           pursuant to title 38 United States Code section 8153,  
2           as amended, for the actual costs or advancements to  
3           third party health care providers pursuant to a  
4           contract with the United States."

5           SECTION 18. Section 237-24.3, Hawaii Revised Statutes, is  
6           amended to read as follows:

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

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

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



- 1 (A) An association of owners of a condominium  
2 property regime established in accordance with  
3 chapter 514A or 514B; 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, whether or not the  
12 ships, barges, vessels, or aircraft travel  
13 between the State and other states or countries  
14 or between the islands of the State;
- 15 (B) Tugboat services including pilotage fees  
16 performed within the State, and the towage of  
17 ships, barges, or vessels in and out of state  
18 harbors, or from one pier to another; and
- 19 (C) The transportation of pilots or governmental  
20 officials to ships, barges, or vessels offshore;  
21 rigging gear; checking freight and similar



1 services; standby charges; and use of moorings  
2 and running mooring lines;

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 section 1002(3) of title 29 of the United  
21 States Code, 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; and





1           "Prosthetic device" means ~~[any artificial device~~  
2           ~~or appliance, instrument, apparatus, or contrivance,~~  
3           ~~including their components, parts, accessories, and~~  
4           ~~replacements thereof, used to replace a missing or~~  
5           ~~surgically removed part of the human body, which is~~  
6           ~~prescribed by a licensed practitioner of medicine,~~  
7           ~~osteopathy, or podiatry and which is sold by the~~  
8           ~~practitioner or which is dispensed and sold by a~~  
9           ~~dealer of prosthetic devices; provided that~~  
10          ~~"prosthetic device" shall not mean any auditory,~~  
11          ~~ophthalmic, dental, or ocular device or appliance,~~  
12          ~~instrument, apparatus, or contrivance;]~~ a replacement,  
13          corrective, or supportive device including repair and  
14          replacement parts for the device, worn on or in the  
15          body to:  
16          (A) Artificially replace a missing portion of the  
17               body;  
18          (B) Prevent or correct physical deformity or  
19               malfunction; or  
20          (C) Support a weak or deformed portion of the body.



1        A prosthetic device does not include corrective  
2        eyeglasses, contact lenses, hearing aids, and dental  
3        prosthesis;

4        (7) Taxes on transient accommodations imposed by chapter  
5        237D and passed on and collected by operators holding  
6        certificates of registration under that chapter;

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

14       (9) Amounts received by a labor organization for real  
15       property leased to:

16       (A) A labor organization; or

17       (B) A trust fund established by a labor organization  
18       for the benefit of its members, families, and  
19       dependents for medical or hospital care, pensions  
20       on retirement or death of employees,



1 apprenticeship and training, and other membership

2 service programs.

3 As used in this paragraph, "labor organization" means

4 a labor organization exempt from federal income tax

5 under section 501(c)(5) (with respect to exemption

6 from tax on corporations, certain trusts, etc.) of the

7 Internal Revenue Code[~~as amended~~];

8 (10) Amounts received from foreign diplomats and consular

9 officials who are holding cards issued or authorized

10 by the United States Department of State granting them

11 an exemption from state taxes; and

12 (11) Amounts received as rent for the rental or leasing of

13 aircraft or aircraft engines used by the lessees or

14 renters for interstate air transportation of

15 passengers and goods. For purposes of this paragraph,

16 payments made pursuant to a lease shall be considered

17 rent regardless of whether the lease is an operating

18 lease or a financing lease. The definition of

19 "interstate air transportation" is the same as in 49

20 U.S.C. section 40102."



SECTION 19. Section 237-31, Hawaii Revised Statutes, is amended to read as follows:

**"§237-31 Remittances.** All remittances of taxes imposed by this chapter shall be made by money, bank draft, check, cashier's check, money order, or certificate of deposit to the office of the department of taxation to which the return was transmitted. The department shall issue its receipts therefor to the taxpayer and shall pay the moneys into the state treasury as a state realization, to be kept and accounted for as provided by law; provided that:

- (1) A sum, not to exceed \$5,000,000, from all general excise tax revenues realized by the State shall be deposited in the state treasury in each fiscal year to the credit of the compound interest bond reserve fund;
- (2) A sum from all general excise tax revenues realized by the State that is equal to one-half of the total amount of funds appropriated or transferred out of the hurricane reserve trust fund under sections 4 and 5 of Act 62, Session Laws of Hawaii 2011, shall be deposited into the hurricane reserve trust fund in fiscal year 2013-2014 and in fiscal year 2014-2015;



1 provided that the deposit required in each fiscal year  
2 shall be made by October 1 of that fiscal year; ~~and~~  
3 ~~+~~ (3) ~~+~~ Commencing with fiscal year 2018-2019, a sum from all  
4 general excise tax revenues realized by the State that  
5 represents the difference between the state public  
6 employer's annual required contribution for the  
7 separate trust fund established under section 87A-42  
8 and the amount of the state public employer's  
9 contributions into that trust fund shall be deposited  
10 to the credit of the State's annual required  
11 contribution into that trust fund in each fiscal year,  
12 as provided in section 87A-42~~[-]~~; and

13 (4) All tax revenues realized by the State under chapters  
14 A, B, and C, respectively, shall be deposited in the  
15 state treasury."

16 SECTION 20. Section 237-34, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

18 "(b) All tax returns and return information required to be  
19 filed under this chapter, and the report of any investigation of  
20 the return or of the subject matter of the return, shall be  
21 confidential. It shall be unlawful for any person or any



1 officer or employee of the State, including the auditor or the  
2 auditor's agent with regard to tax return information obtained  
3 pursuant to section 23-5(a), to intentionally make known  
4 information imparted by any tax return or return information  
5 filed pursuant to this chapter, or any report of any  
6 investigation of the return or of the subject matter of the  
7 return, or to wilfully permit any return, return information, or  
8 report so made, or any copy thereof, to be seen or examined by  
9 any person; provided that for tax purposes only, the taxpayer,  
10 the taxpayer's authorized agent, or persons with a material  
11 interest in the return, return information, or report may  
12 examine them. Unless otherwise provided by law, persons with a  
13 material interest in the return, return information, or report  
14 shall include:

- 15 (1) Trustees;
- 16 (2) Partners;
- 17 (3) Persons named in a board resolution or a ~~[one]~~ 1 per  
18 cent shareholder in the case of a corporate return;
- 19 (4) The person authorized to act for a corporation in  
20 dissolution;
- 21 (5) The shareholder of an S corporation;



- 1       (6) The personal representative, trustee, heir, or  
2       beneficiary of an estate or trust in the case of the  
3       estate's or decedent's return;
- 4       (7) The committee, trustee, or guardian of any person in  
5       paragraphs (1) through (6) who is incompetent;
- 6       (8) The trustee in bankruptcy or receiver, and the  
7       attorney-in-fact of any person in paragraphs (1)  
8       through (7);
- 9       (9) Persons duly authorized by the State in connection  
10      with their official duties;
- 11      (10) Any duly accredited tax official of the United States  
12      or of any state or territory;
- 13      (11) The Multistate Tax Commission or its authorized  
14      representative;
- 15      (12) Members of a limited liability company; ~~[and]~~
- 16      (13) A person contractually obligated to pay the taxes  
17      assessed against another when the latter person is  
18      under audit by the department~~[-]~~; and
- 19      (14) The Streamlined Sales Tax Governing Board, Inc., or  
20      its authorized representative.



1 Any violation of this subsection shall be a class C  
2 felony."

3 SECTION 21. Section 238-2, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 **"§238-2 Imposition of tax on tangible personal property;**  
6 **exemptions.** There is hereby levied an excise tax on the use in  
7 this State of tangible personal property [~~which~~] that is  
8 imported by a taxpayer in this State whether owned, purchased  
9 from an unlicensed seller, or however acquired for use in this  
10 State[~~-~~], unless subject to tax or exempt from tax under chapter  
11 B. The tax imposed by this chapter shall accrue when the  
12 property is acquired by the importer or purchaser and becomes  
13 subject to the taxing jurisdiction of the State. The [~~rates~~]  
14 rate of the tax hereby imposed [~~and the exemptions thereof are~~  
15 ~~as follows:~~

16 ~~(1) If the importer or purchaser is licensed under chapter~~  
17 ~~237 and is:~~  
18 ~~(A) A wholesaler or jobber importing or purchasing~~  
19 ~~for purposes of sale or resale; or~~  
20 ~~(B) A manufacturer importing or purchasing material~~  
21 ~~or commodities which are to be incorporated by~~





1           ~~the manufacturer into a finished or saleable~~  
2           ~~product (including the container or package in~~  
3           ~~which the product is contained) wherein it will~~  
4           ~~remain in such form as to be perceptible to the~~  
5           ~~senses, and which finished or saleable product is~~  
6           ~~to be sold in such manner as to result in a~~  
7           ~~further tax on the activity of the manufacturer~~  
8           ~~as the manufacturer or as a wholesaler, and not~~  
9           ~~as a retailer,~~

10          ~~there shall be no tax; provided that if the~~  
11          ~~wholesaler, jobber, or manufacturer is also engaged in~~  
12          ~~business as a retailer (so classed under chapter 237),~~  
13          ~~paragraph (2) shall apply to the wholesaler, jobber,~~  
14          ~~or manufacturer, but the director of taxation shall~~  
15          ~~refund to the wholesaler, jobber, or manufacturer, in~~  
16          ~~the manner provided under section 231-23(c) such~~  
17          ~~amount of tax as the wholesaler, jobber, or~~  
18          ~~manufacturer shall, to the satisfaction of the~~  
19          ~~director, establish to have been paid by the~~  
20          ~~wholesaler, jobber, or manufacturer to the director~~  
21          ~~with respect to property which has been used by the~~



1           ~~wholesaler, jobber, or manufacturer for the purposes~~  
2           ~~stated in this paragraph;~~

3       ~~(2) If the importer or purchaser is licensed under chapter~~  
4       ~~237 and is:~~

5       ~~(A) A retailer or other person importing or~~  
6           ~~purchasing for purposes of sale or resale, not~~  
7           ~~exempted by paragraph (1);~~

8       ~~(B) A manufacturer importing or purchasing material~~  
9           ~~or commodities which are to be incorporated by~~  
10          ~~the manufacturer into a finished or saleable~~  
11          ~~product (including the container or package in~~  
12          ~~which the product is contained) wherein it will~~  
13          ~~remain in such form as to be perceptible to the~~  
14          ~~senses, and which finished or saleable product is~~  
15          ~~to be sold at retail in this State, in such~~  
16          ~~manner as to result in a further tax on the~~  
17          ~~activity of the manufacturer in selling such~~  
18          ~~products at retail;~~

19       ~~(C) A contractor importing or purchasing material or~~  
20          ~~commodities which are to be incorporated by the~~  
21          ~~contractor into the finished work or project~~



1           ~~required by the contract and which will remain in~~  
2           ~~such finished work or project in such form as to~~  
3           ~~be perceptible to the senses;~~

4           ~~(D) A person engaged in a service business or calling~~  
5           ~~as defined in section 237-7, or a person~~  
6           ~~furnishing transient accommodations subject to~~  
7           ~~the tax imposed by section 237D-2, in which the~~  
8           ~~import or purchase of tangible personal property~~  
9           ~~would have qualified as a sale at wholesale as~~  
10           ~~defined in section 237-4(a)(8) had the seller of~~  
11           ~~the property been subject to the tax in chapter~~  
12           ~~237; or~~

13           ~~(E) A publisher of magazines or similar printed~~  
14           ~~materials containing advertisements, when the~~  
15           ~~publisher is under contract with the advertisers~~  
16           ~~to distribute a minimum number of magazines or~~  
17           ~~similar printed materials to the public or~~  
18           ~~defined segment of the public, whether or not~~  
19           ~~there is a charge to the persons who actually~~  
20           ~~receive the magazines or similar printed~~  
21           ~~materials,~~



~~the tax shall be one-half of one per cent of the  
purchase price of the property, if the purchase and  
sale are consummated in Hawaii; or, if there is no  
purchase price applicable thereto, or if the purchase  
or sale is consummated outside of Hawaii, then one-  
half of one per cent of the value of such property;  
and~~

~~(3) In all other cases, four]~~ is 4 per cent of the value  
of the property.

For purposes of this section, tangible personal property is  
property that is imported by the taxpayer for use in this State,  
notwithstanding the fact that title to the property, or the risk  
of loss to the property, passes to the purchaser of the property  
at a location outside this State."

SECTION 22. Section 238-2.3, Hawaii Revised Statutes, is  
amended to read as follows:

**"§238-2.3 Imposition of tax on imported services or  
contracting; exemptions.** There is hereby levied an excise tax  
on the value of services or contracting as defined in section  
237-6 that are performed by an unlicensed seller at a point  
outside the State and imported or purchased for use in this



1 State[-], unless subject to tax or exempt from tax under chapter

2 B. The tax imposed by this chapter shall accrue when the  
3 service or contracting as defined in section 237-6 is received  
4 by the importer or purchaser and becomes subject to the taxing  
5 jurisdiction of the State. The [~~rates~~] rate of the tax hereby  
6 imposed [~~and the exemptions from the tax are as follows:~~

7 ~~(1) If the importer or purchaser is licensed under chapter~~  
8 ~~237 and is:~~

9 ~~(A) Engaged in a service business or calling in which~~  
10 ~~the imported or purchased services or contracting~~  
11 ~~become identifiable elements, excluding overhead,~~  
12 ~~of the services rendered by the importer or~~  
13 ~~purchaser, and the gross income of the importer~~  
14 ~~or purchaser is subject to the tax imposed under~~  
15 ~~chapter 237 on services at the rate of one-half~~  
16 ~~of one per cent or the rate of tax imposed under~~  
17 ~~section 237-13.3;~~

18 ~~(B) A manufacturer importing or purchasing services~~  
19 ~~or contracting that become identifiable elements,~~  
20 ~~excluding overhead, of a finished or saleable~~  
21 ~~product (including the container or package in~~



1           ~~which the product is contained) and the finished~~  
2           ~~or saleable product is to be sold in a manner~~  
3           ~~that results in a further tax on the manufacturer~~  
4           ~~as a wholesaler, and not a retailer; or~~  
5       ~~(C) A contractor importing or purchasing contracting~~  
6           ~~that become identifiable elements, excluding~~  
7           ~~overhead, of the finished work or project~~  
8           ~~required under the contract; provided that:~~  
9           ~~(i) The gross proceeds derived by the contractor~~  
10           ~~are subject to the tax under section 237-~~  
11           ~~13(3) as a contractor; and~~  
12       ~~(ii) The contractor could have deducted amounts~~  
13           ~~paid to the subcontractor under section 237-~~  
14           ~~13(3) (B) if the subcontractor was subject to~~  
15           ~~general excise tax under chapter 237;~~  
16       ~~there shall be no tax imposed on the value of the~~  
17       ~~imported or purchased services or contracting;~~  
18       ~~provided that if the manufacturer is also engaged in~~  
19       ~~business as a retailer as classified under chapter~~  
20       ~~237, paragraph (2) shall apply to the manufacturer,~~  
21       ~~but the director of taxation shall refund to the~~



1 ~~manufacturer, in the manner provided under section~~  
2 ~~231-23(c), that amount of tax that the manufacturer,~~  
3 ~~to the satisfaction of the director, shall establish~~  
4 ~~to have been paid by the manufacturer to the director~~  
5 ~~with respect to services that have been used by the~~  
6 ~~manufacturer for the purposes stated in this~~  
7 ~~paragraph.~~

8 ~~(2) If the importer or purchaser is a person licensed~~  
9 ~~under chapter 237 and is:~~

10 ~~(A) Engaged in a service business or calling in which~~  
11 ~~the imported or purchased services or contracting~~  
12 ~~become identifiable elements, excluding overhead,~~  
13 ~~of the services rendered by the importer or~~  
14 ~~purchaser, and the gross income from those~~  
15 ~~services when sold by the importer or purchaser~~  
16 ~~is subject to the tax imposed under chapter 237~~  
17 ~~at the highest rate;~~

18 ~~(B) A manufacturer importing or purchasing services~~  
19 ~~or contracting that become identifiable elements,~~  
20 ~~excluding overhead, of the finished or saleable~~  
21 ~~manufactured product (including the container or~~



1 ~~package in which the product is contained) and~~  
2 ~~the finished or saleable product is to be sold in~~  
3 ~~a manner that results in a further tax under~~  
4 ~~chapter 237 on the activity of the manufacturer~~  
5 ~~as a retailer; or~~

6 ~~(C) A contractor importing or purchasing services~~  
7 ~~that become identifiable elements, excluding~~  
8 ~~overhead, of the finished work or project~~  
9 ~~required, under the contract, and where the gross~~  
10 ~~proceeds derived by the contractor are subject to~~  
11 ~~the tax under section 237-13(3) as a contractor,~~  
12 ~~the tax shall be one-half of one per cent of the value~~  
13 ~~of the imported or purchased services or contracting,~~  
14 ~~and~~

15 ~~(3) In all other cases, the importer or purchaser is~~  
16 ~~subject to the tax at the rate of four] is 4 per cent~~  
17 ~~on the value of the imported or purchased services or~~  
18 ~~contracting."~~

19 SECTION 23. Section 238-2.6, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:





1       "(a) The county surcharge on state tax, upon the adoption  
2 of a county ordinance and in accordance with the requirements of  
3 section 46-16.8, shall be levied, assessed, and collected as  
4 provided in this section on the value of property and services  
5 taxable under this chapter. No county shall set the surcharge  
6 on state tax at a rate greater than [~~one-half~~] 0.5 per cent of  
7 the value of property taxable under this chapter. All  
8 provisions of this chapter shall apply to the county surcharge  
9 on state tax. No county shall conduct an independent audit of  
10 sellers registered under the streamlined sales and use tax  
11 agreement. With respect to the surcharge, the director shall  
12 have all the rights and powers provided under this chapter. In  
13 addition, the director of taxation shall have the exclusive  
14 rights and power to determine the county or counties in which a  
15 person imports or purchases tangible personal property and, in  
16 the case of a person importing or purchasing tangible property  
17 in more than one county, the director shall determine, through  
18 apportionment or other means, that portion of the surcharge on  
19 state tax attributable to the importation or purchase in each  
20 county."



1       SECTION 24. Section 237-4, Hawaii Revised Statutes, is  
2 repealed.

3       ~~["§237-4 "Wholesaler", "jobber", defined. (a)~~  
4 ~~"Wholesaler" or "jobber" applies only to a person making sales~~  
5 ~~at wholesale. Only the following are sales at wholesale:~~

6       ~~(1) Sales to a licensed retail merchant, jobber, or other~~  
7 ~~licensed seller for purposes of resale;~~

8       ~~(2) Sales to a licensed manufacturer of materials or~~  
9 ~~commodities that are to be incorporated by the~~  
10 ~~manufacturer into a finished or saleable product~~  
11 ~~(including the container or package in which the~~  
12 ~~product is contained) during the course of its~~  
13 ~~preservation, manufacture, or processing, including~~  
14 ~~preparation for market, and that will remain in such~~  
15 ~~finished or saleable product in such form as to be~~  
16 ~~perceptible to the senses, which finished or saleable~~  
17 ~~product is to be sold and not otherwise used by the~~  
18 ~~manufacturer;~~

19       ~~(3) Sales to a licensed producer or cooperative~~  
20 ~~association of materials or commodities that are to be~~  
21 ~~incorporated by the producer or by the cooperative~~



1 ~~association into a finished or saleable product that~~  
2 ~~is to be sold and not otherwise used by the producer~~  
3 ~~or cooperative association, including specifically~~  
4 ~~materials or commodities expended as essential to the~~  
5 ~~planting, growth, nurturing, and production of~~  
6 ~~commodities that are sold by the producer or by the~~  
7 ~~cooperative association;~~

8 ~~(4) Sales to a licensed contractor, of materials or~~  
9 ~~commodities that are to be incorporated by the~~  
10 ~~contractor into the finished work or project required~~  
11 ~~by the contract and that will remain in such finished~~  
12 ~~work or project in such form as to be perceptible to~~  
13 ~~the senses;~~

14 ~~(5) Sales to a licensed producer, or to a cooperative~~  
15 ~~association described in section 237-23(a)(7) for sale~~  
16 ~~to a licensed producer, or to a licensed person~~  
17 ~~operating a feed lot, of poultry or animal feed,~~  
18 ~~hatching eggs, semen, replacement stock, breeding~~  
19 ~~services for the purpose of raising or producing~~  
20 ~~animal or poultry products for disposition as~~  
21 ~~described in section 237-5 or for incorporation into a~~



1       ~~manufactured product as described in paragraph (2) or~~  
2       ~~for the purpose of breeding, hatching, milking, or egg~~  
3       ~~laying other than for the customer's own consumption~~  
4       ~~of the meat, poultry, eggs, or milk so produced;~~  
5       ~~provided that in the case of a feed lot operator, only~~  
6       ~~the segregated cost of the feed furnished by the feed~~  
7       ~~lot operator as part of the feed lot operator's~~  
8       ~~service to a licensed producer of poultry or animals~~  
9       ~~to be butchered or to a cooperative association~~  
10       ~~described in section 237-23(a)(7) of such licensed~~  
11       ~~producers shall be deemed to be a sale at wholesale;~~  
12       ~~and provided further that any amount derived from the~~  
13       ~~furnishing of feed lot services, other than the~~  
14       ~~segregated cost of feed, shall be deemed taxable at~~  
15       ~~the service business rate. This paragraph shall not~~  
16       ~~apply to the sale of feed for poultry or animals to be~~  
17       ~~used for hauling, transportation, or sports purposes;~~  
18       ~~(6) Sales to a licensed producer, or to a cooperative~~  
19       ~~association described in section 237-23(a)(7) for sale~~  
20       ~~to the producer, of seed or seedstock for producing~~  
21       ~~agricultural and aquacultural products, or bait for~~



1        ~~catching fish (including the catching of bait for~~  
2        ~~catching fish), which agricultural and aquacultural~~  
3        ~~products or fish are to be disposed of as described in~~  
4        ~~section 237-5 or to be incorporated in a manufactured~~  
5        ~~product as described in paragraph (2);~~

6        ~~(7) Sales to a licensed producer, or to a cooperative~~  
7        ~~association described in section 237-23(a) (7) for sale~~  
8        ~~to such producer; of polypropylene shade cloth; of~~  
9        ~~polyfilm; of polyethylene film; of cartons and such~~  
10       ~~other containers, wrappers, and sacks, and binders to~~  
11       ~~be used for packaging eggs, vegetables, fruits, and~~  
12       ~~other agricultural and aquacultural products; of~~  
13       ~~seedlings and cuttings for producing nursery plants or~~  
14       ~~aquacultural products; or of chick containers; which~~  
15       ~~cartons and such other containers, wrappers, and~~  
16       ~~sacks, binders, seedlings, cuttings, and containers~~  
17       ~~are to be used as described in section 237-5, or to be~~  
18       ~~incorporated in a manufactured product as described in~~  
19       ~~paragraph (2);~~

20       ~~(8) Sales of tangible personal property where:~~



~~(A) Tangible personal property is sold upon the order or request of a licensed seller for the purpose of rendering a service in the course of the person's service business or calling, or upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;~~

~~(B) The tangible personal property becomes or is used as an identifiable element of the service rendered; and~~

~~(C) The cost of the tangible personal property does not constitute overhead to the licensed seller; the sale shall be subject to section 237-13.3;~~

~~(9) Sales to a licensed leasing company of capital goods that have a depreciable life, are purchased by the leasing company for lease to its customers, and are thereafter leased as a service to others;~~

~~(10) Sales of services to a licensed seller engaging in a business or calling whenever:~~

~~(A) Either:~~



1           ~~(i) In the context of a service-to-service~~  
2           ~~transaction, a service is rendered upon the~~  
3           ~~order or request of a licensed seller for~~  
4           ~~the purpose of rendering another service in~~  
5           ~~the course of the seller's service business~~  
6           ~~or calling, including a dealer's furnishing~~  
7           ~~of goods or services to the purchaser of~~  
8           ~~tangible personal property to fulfill a~~  
9           ~~warranty obligation of the manufacturer of~~  
10          ~~the property;~~

11          ~~(ii) In the context of a service-to-tangible~~  
12          ~~personal property transaction, a service is~~  
13          ~~rendered upon the order or request of a~~  
14          ~~licensed seller for the purpose of~~  
15          ~~manufacturing, producing, or preparing~~  
16          ~~tangible personal property to be sold;~~

17          ~~(iii) In the context of a services-to-contracting~~  
18          ~~transaction, a service is rendered upon the~~  
19          ~~order or request of a licensed contractor as~~  
20          ~~defined in section 237-6 for the purpose of~~  
21          ~~assisting that licensed contractor; or~~



1           ~~(iv) In the context of a services-to-transient~~  
2           ~~accommodations rental transaction, a service~~  
3           ~~is rendered upon the order or request of a~~  
4           ~~person subject to tax under section 237D-2~~  
5           ~~for the purpose of furnishing transient~~  
6           ~~accommodations;~~

7           ~~(B) The benefit of the service passes to the customer~~  
8           ~~of the licensed seller, licensed contractor, or~~  
9           ~~person furnishing transient accommodations as an~~  
10           ~~identifiable element of the other service or~~  
11           ~~property to be sold, the contracting, or the~~  
12           ~~furnishing of transient accommodations;~~

13           ~~(C) The cost of the service does not constitute~~  
14           ~~overhead to the licensed seller, licensed~~  
15           ~~contractor, or person furnishing transient~~  
16           ~~accommodations;~~

17           ~~(D) The gross income of the licensed seller is not~~  
18           ~~divided between the licensed seller and another~~  
19           ~~licensed seller, contractor, or person furnishing~~  
20           ~~transient accommodations for imposition of the~~  
21           ~~tax under this chapter;~~





1       ~~(E) The gross income of the licensed seller is not~~  
2       ~~subject to a deduction under this chapter or~~  
3       ~~chapter 237D; and~~

4       ~~(F) The resale of the service, tangible personal~~  
5       ~~property, contracting, or transient~~  
6       ~~accommodations is subject to the tax imposed~~  
7       ~~under this chapter at the highest tax rate.~~

8       ~~Sales subject to this paragraph shall be subject to~~  
9       ~~section 237-13.3;~~

10      ~~(11) Sales to a licensed retail merchant, jobber, or other~~  
11      ~~licensed seller of bulk condiments or prepackaged~~  
12      ~~single-serving packets of condiments that are provided~~  
13      ~~to customers by the licensed retail merchant, jobber,~~  
14      ~~or other licensed seller;~~

15      ~~(12) Sales to a licensed retail merchant, jobber, or other~~  
16      ~~licensed seller of tangible personal property that~~  
17      ~~will be incorporated or processed by the licensed~~  
18      ~~retail merchant, jobber, or other licensed seller into~~  
19      ~~a finished or saleable product during the course of~~  
20      ~~its preparation for market (including disposable,~~  
21      ~~nonreturnable containers, packages, or wrappers, in~~



1 ~~which the product is contained and that are generally~~  
2 ~~known and most commonly used to contain food or~~  
3 ~~beverage for transfer or delivery), and which finished~~  
4 ~~or saleable product is to be sold and not otherwise~~  
5 ~~used by the licensed retail merchant, jobber, or other~~  
6 ~~licensed seller;~~

7 ~~(13) Sales of amusements subject to taxation under section~~  
8 ~~237-13(4) to a licensed seller engaging in a business~~  
9 ~~or calling whenever:~~

10 ~~(A) Either:~~

11 ~~(i) In the context of an amusement to service~~  
12 ~~transaction, an amusement is rendered upon~~  
13 ~~the order or request of a licensed seller~~  
14 ~~for the purpose of rendering another service~~  
15 ~~in the course of the seller's service~~  
16 ~~business or calling;~~

17 ~~(ii) In the context of an amusement to tangible~~  
18 ~~personal property transaction, an amusement~~  
19 ~~is rendered upon the order or request of a~~  
20 ~~licensed seller for the purpose of selling~~  
21 ~~tangible personal property; or~~



1           ~~(iii) In the context of an amusement-to-amusement~~  
2           ~~transaction, an amusement is rendered upon~~  
3           ~~the order or request of a licensed seller~~  
4           ~~for the purpose of rendering another~~  
5           ~~amusement in the course of the person's~~  
6           ~~amusement business;~~

7           ~~(B) The benefit of the amusement passes to the~~  
8           ~~customer of the licensed seller as an~~  
9           ~~identifiable element of the other service,~~  
10           ~~tangible personal property to be sold, or~~  
11           ~~amusement;~~

12           ~~(C) The cost of the amusement does not constitute~~  
13           ~~overhead to the licensed seller;~~

14           ~~(D) The gross income of the licensed seller is not~~  
15           ~~divided between the licensed seller and another~~  
16           ~~licensed seller, person furnishing transient~~  
17           ~~accommodations, or person rendering an amusement~~  
18           ~~for imposition of the tax under chapter 237;~~

19           ~~(E) The gross income of the licensed seller is not~~  
20           ~~subject to a deduction under this chapter; and~~



~~(F) The resale of the service, tangible personal property, or amusement is subject to the tax imposed under this chapter at the highest rate.~~

~~As used in this paragraph, "amusement" means entertainment provided as part of a show for which there is an admission charge. Sales subject to this paragraph shall be subject to section 237-13.3; and~~

~~(14) Sales by a printer to a publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials.~~

~~(b) If the use tax law is finally held by a court of competent jurisdiction to be unconstitutional or invalid insofar as it purports to tax the use or consumption of tangible personal property imported into the State in interstate or foreign commerce or both, wholesalers and jobbers shall be taxed thereafter under this chapter in accordance with the following~~



1 ~~definition (which shall supersede the preceding paragraph~~  
2 ~~otherwise defining "wholesaler" or "jobber"):~~ ~~"Wholesaler" or~~  
3 ~~"jobber" means a person, or a definitely organized division~~  
4 ~~thereof, definitely organized to render and rendering a general~~  
5 ~~distribution service that buys and maintains at the person's~~  
6 ~~place of business a stock or lines of merchandise that the~~  
7 ~~person distributes; and that the person, through salespersons,~~  
8 ~~advertising, or sales promotion devices, sells to licensed~~  
9 ~~retailers, to institutional or licensed commercial or industrial~~  
10 ~~users, in wholesale quantities and at wholesale rates. A~~  
11 ~~corporation deemed not to be carrying on a trade or business in~~  
12 ~~this State under section 235-6 shall nevertheless be deemed to~~  
13 ~~be a wholesaler and shall be subject to the tax imposed by this~~  
14 ~~chapter." ]~~

15 SECTION 25. Section 237-5, Hawaii Revised Statutes, is  
16 repealed.

17 ~~[ "§237-5 "Producer" defined. "Producer" means any person~~  
18 ~~engaged in the business of raising and producing agricultural~~  
19 ~~products in their natural state, or in producing natural~~  
20 ~~resource products, or engaged in the business of fishing or~~  
21 ~~aquaculture, for sale, or for shipment or transportation out of~~



1 ~~the State, of the agricultural or aquaculture products in their~~  
2 ~~natural or processed state, or butchered and dressed, or the~~  
3 ~~natural resource products, or fish.~~

4 ~~As used in this section "agricultural products" include~~  
5 ~~floricultural, horticultural, viticultural, forestry, nut,~~  
6 ~~coffee, dairy, livestock, poultry, bee, animal, and any other~~  
7 ~~farm, agronomic, or plantation products."]~~

8 SECTION 26. Section 237-13.3, Hawaii Revised Statutes, is  
9 repealed.

10 [~~"§237-13.3 Application of sections 237-4(a)(8), 237-~~  
11 ~~4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-~~  
12 ~~13(6)(A). (a) Sections 237-4(a)(8), 237-4(a)(10), 237-~~  
13 ~~4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A) to the~~  
14 ~~contrary notwithstanding, instead of the tax levied under~~  
15 ~~section 237-13(2)(A) on wholesale sales subject to section 237-~~  
16 ~~4(a)(8)(B), under section 237-13(4)(A) on a wholesaler subject~~  
17 ~~to section 237-4(a)(13), and under section 237-13(6)(A) on a~~  
18 ~~wholesaler subject to section 237-4(a)(10) at one-half of one~~  
19 ~~per cent, during the period January 1, 2000, to December 31,~~  
20 ~~2005, the tax shall be as follows:~~

21 ~~(1) In calendar year 2000, 3.5 per cent;~~



~~(2) In calendar year 2001, 3.0 per cent;~~

~~(3) In calendar year 2002, 2.5 per cent;~~

~~(4) In calendar year 2003, 2.0 per cent;~~

~~(5) In calendar year 2004, 1.5 per cent;~~

~~(6) In calendar year 2005, 1.0 per cent; and~~

~~(7) In calendar year 2006 and thereafter, the tax shall be  
0.5 per cent.~~

~~(b) The department shall have the authority to implement  
the tax rate changes in subsection (a) by prescribing tax forms  
and instructions that require tax reporting and payment by  
deduction, allocation, or any other method to determine tax  
liability with due regard to the tax rate changes."]~~

SECTION 27. Section 237-13.5, Hawaii Revised Statutes, is  
repealed.

~~["§237-13.5 Assessment on generated electricity. Any  
other provision of the law to the contrary notwithstanding, the  
levy and assessment of the general excise tax on the gross  
proceeds from the sale of electric power to a public utility  
company for resale to the public, shall be made only as a tax on  
the business of a producer, at the rate assessed producers,  
under section 237-13(2)(A)."]~~



1       SECTION 28.   Section 237-15, Hawaii Revised Statutes, is  
2   repealed.

3       ~~["§237-15 Technicians. When technicians supply dentists~~  
4 ~~or physicians with dentures, orthodontic devices, braces, and~~  
5 ~~similar items which have been prepared by the technician in~~  
6 ~~accordance with specifications furnished by the dentist or~~  
7 ~~physician, and such items are to be used by the dentist or~~  
8 ~~physician in the dentist's or physician's professional practice~~  
9 ~~for a particular patient who is to pay the dentist or physician~~  
10 ~~for the same as a part of the dentist's or physician's~~  
11 ~~professional services, the technician shall be taxed as though~~  
12 ~~the technician were a manufacturer selling a product to a~~  
13 ~~licensed retailer, rather than at the rate of four per cent~~  
14 ~~which is generally applied to professions and services."]~~

15       SECTION 29.   Section 237-17, Hawaii Revised Statutes, is  
16   repealed.

17       ~~["§237-17 Persons with impaired sight, hearing, or who are~~  
18 ~~totally disabled. Anything in section 237-13 to the contrary~~  
19 ~~notwithstanding, the privilege tax levied, assessed, and~~  
20 ~~collected on account of the business or other activities of~~  
21 ~~individuals who are blind, deaf, or totally disabled,~~





1 ~~corporations all of whose outstanding shares are owned by~~  
2 ~~individuals who are blind, deaf, or totally disabled, general,~~  
3 ~~limited, or limited liability partnerships, all of whose~~  
4 ~~partners are blind, deaf, or totally disabled, or limited~~  
5 ~~liability companies, all of whose members are blind, deaf, or~~  
6 ~~totally disabled, shall not exceed one-half of one per cent of~~  
7 ~~the proceeds, sales, income, or other receipts subject to tax.~~  
8 ~~For the purpose of this chapter "blind", "deaf", or "totally~~  
9 ~~disabled" is defined as in section 235-1. The impairment of~~  
10 ~~sight or hearing, or the disability, shall be certified to as~~  
11 ~~provided in section 235-1." ]~~

12 SECTION 30. Section 237-29.55, Hawaii Revised Statutes, is  
13 repealed.

14 ~~[ "~~§237-29.55~~ Exemption for sale of tangible personal~~  
15 ~~property for resale at wholesale. (a) There shall be exempted~~  
16 ~~from, and excluded from the measure of, the taxes imposed by~~  
17 ~~this chapter all of the gross proceeds or gross income arising~~  
18 ~~from the sale of tangible personal property imported to Hawaii~~  
19 ~~from a foreign or domestic source to a licensed taxpayer for~~  
20 ~~subsequent resale for the purpose of wholesale as defined under~~  
21 ~~section 237-4.~~



1       ~~(b) The department, by rule, may provide that a seller may~~  
2       ~~take from the purchaser of imported tangible personal property,~~  
3       ~~a certificate, in a form that the department shall prescribe,~~  
4       ~~certifying that the purchaser of the imported tangible personal~~  
5       ~~property shall resell the imported tangible personal property at~~  
6       ~~wholesale as defined under section 237-4. Any purchaser who~~  
7       ~~furnishes a certificate shall be obligated to pay to the seller,~~  
8       ~~upon demand, if the sale in fact is not a sale for the purpose~~  
9       ~~of resale at wholesale, the amount of the additional tax which~~  
10       ~~by reason thereof is imposed upon the seller. The absence of a~~  
11       ~~certificate, unless the sales of the business are exclusively a~~  
12       ~~sale for the purpose of resale at wholesale, in itself, shall~~  
13       ~~give rise to the presumption that the sale is not a sale for the~~  
14       ~~purpose of resale at wholesale." ]~~

15       SECTION 31. Section 238-4, Hawaii Revised Statutes, is  
16       repealed.

17       ~~[ "**§238-4 Certain property used by producers.** If a~~  
18       ~~licensed producer, or a cooperative association acting under the~~  
19       ~~authority of chapter 421 or 422, in order to sell to such~~  
20       ~~producer, or a licensed person, imports into the State or~~  
21       ~~acquires in the State commodities, materials, items, services,~~



~~1 or living things enumerated in section [237-4(a)(3) and (5) to~~  
~~2 (7)], then section 237-4 shall apply. If section 237-4 applies~~  
~~3 and the producer is engaged in the sale of the producer's~~  
~~4 products at retail or in any manner other than at wholesale,~~  
~~5 then the tax upon use of property in the State imposed by~~  
~~6 section 238-2(2) shall apply the same as in the case of a~~  
~~7 purchaser who is a licensed retailer. In other such cases no~~  
~~8 tax shall be imposed under this chapter."]~~

9 SECTION 32. (a) There is created a committee to oversee  
10 the department of taxation's implementation and administration  
11 of and compliance with the streamlined sales and use tax  
12 agreement. The committee shall be administratively attached to  
13 the department of taxation. Members of the committee shall be  
14 reimbursed by their appointing body for expenses, including  
15 travel expenses.

16 (b) The president of the senate and the speaker of the  
17 house of representatives shall appoint three members each, that  
18 shall comprise a committee, the purpose of which is to hold  
19 meetings necessary to carry out this Act and to serve as part of  
20 the State's official delegation to the Streamlined Sales Tax  
21 Governing Board when establishing the State's criteria for



1 compliance with the streamlined sales and use tax agreement.  
2 The director of taxation, or a representative thereof, shall be  
3 an ex officio member. The members of the committee may elect a  
4 chair or co-chairs. Duties of the appointees shall include  
5 attending meetings of the governing board, performing technical  
6 reviews of Hawaii legislation and state tax operations, and  
7 working with the department of taxation to ensure that all  
8 appropriate steps are taken in order to have Hawaii certified as  
9 a state in full compliance with the streamlined sales and use  
10 tax agreement.

11 (c) The department of taxation may seek technical  
12 assistance that includes analysis of the fiscal and legal  
13 impacts of proposed conformance with the existing general excise  
14 tax law and other laws and any other issues that might result  
15 from the implementation of a streamlined sales and use tax under  
16 the streamlined sales and use tax agreement, as well as for the  
17 preparation of proposed legislation by contracting with legal  
18 professionals that have a background and practice in taxation.

19 (d) The department of taxation shall secure the services  
20 necessary to support the project in as expeditious a manner as  
21 possible. The legislative reference bureau shall assist the



1 department of taxation or contractor in drafting any appropriate  
2 legislation.

3 (e) In an effort to ensure that the State's application  
4 for certification with the Streamlined Sales Tax Governing Board  
5 is completed in as swift and seamless a manner as is possible,  
6 the department of taxation shall work cooperatively with the  
7 committee in gaining the committee's concurrence prior to  
8 contracting for services with outside entities, agencies, or  
9 persons for the implementation and administration of or  
10 compliance with the streamlined sales and use tax agreement.

11 (f) The department of taxation may contract with outside  
12 entities, agencies, or persons for the purpose of collecting the  
13 tax revenues owed by taxpayers pursuant to the streamlined sales  
14 and use tax agreement, as well as delinquent taxes owed by those  
15 taxpayers, in implementing the streamlined sales and use tax  
16 agreement in this State. The outside entities, agencies, or  
17 persons that the department of taxation contracts with to  
18 collect the tax revenues generated from the streamlined sales  
19 and use tax agreement shall be paid from the tax revenues  
20 collected under the streamlined sales and use tax agreement to  
21 ensure that the cost of implementing and administering the



1 streamlined sales and use tax agreement for the State is  
2 minimal.

3 SECTION 33. In codifying the new chapters added by  
4 sections 2, 3, and 4 of this Act and new sections added by  
5 sections 6 and 9 of this Act, the revisor of statutes shall  
6 substitute appropriate section numbers for the letters used in  
7 designating the new chapters and sections in this Act.

8 SECTION 34. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 35. This Act shall take effect when the State  
11 becomes a party to the streamlined sales and use tax agreement;  
12 provided that:

13 (1) Section 32 shall take effect on approval; and

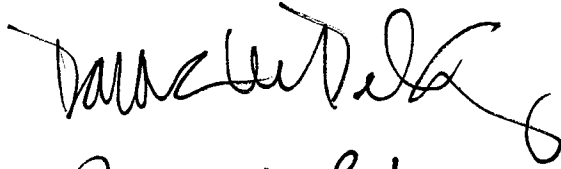
14 (2) The amendments made to section 237-24, Hawaii Revised  
15 Statutes, by this Act shall not be repealed when that  
16 section is reenacted on December 31, 2018, pursuant to  
17 section 4, Act 70, Session Laws of Hawaii 2009, as  
18 amended by section 2 of Act 164, Session Laws of  
19 Hawaii 2013.

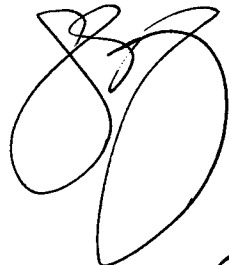
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INTRODUCED BY: *Shianne Chun Oabland*



S.B. NO. 259

  
Ronald H. Baker

  
Stephen P. Pierce  
Breene Hunt





# S.B. NO. 259

**Report Title:**

Streamlined Sales and Use Tax Amendments

**Description:**

Adopts amendments to Hawaii tax laws to implement the streamlined sales and use tax agreement; takes effect when the State becomes a party to the streamlined sales and use tax agreement; with section 32, creating a committee to oversee the department of taxation's implementation and administration of and compliance with the streamlined sales and use tax agreement, to take effect on approval.

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

