

JAN 25 2017

A BILL FOR AN ACT

RELATING TO USE TAX.

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

1 SECTION 1. The legislature finds that as online purchases
2 by residents from retailers located out-of-state increase, the
3 State loses more and more tax revenues in cases where the
4 taxpayers do not pay an appropriate amount of use taxes. Use
5 taxes are imposed on goods purchased out-of-state and are in
6 lieu of our general excise taxes.

7 The purpose of this Act is to enact a purchaser's use tax
8 remittance that is similar to an existing law in Colorado to
9 ensure that use taxes are collected.

10 SECTION 2. Chapter 238, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§238- Purchaser's use tax remittance. (a) Every
14 person subject to this chapter who uses, stores, or consumes
15 tangible personal property in the conduct of a business in this
16 State, which property is purchased outside this state, and who
17 has not paid the use tax imposed by this chapter to a retailer



1 shall make a return and remit the tax imposed by this section to
2 the director of taxation for the preceding period covered by the
3 remittance on forms prescribed, showing in detail the tangible
4 personal property stored, used, or consumed by such person in
5 the conduct of business within the State in the preceding period
6 covered by the remittance if the use tax has not been paid. If
7 the cumulative tax due at the end of any month is in excess of
8 \$300, such person shall make a return and remit the tax due
9 before the twentieth day of the following month. If the total
10 tax due in a calendar year is \$300 or less, such person shall
11 make a single return and remittance for such calendar year
12 before January 20 of the following calendar year.

13 (b) Every person who is subject to this section who uses,
14 stores, or consumes tangible personal property not in the
15 conduct of a business, which is purchased outside this State,
16 who has not paid the use tax imposed by this chapter, shall make
17 a return and remit the tax annually, at the time the Hawaii
18 income tax of such person is due and payable, on forms
19 prescribed by the director of taxation, showing in detail the
20 tangible personal property stored, used, or consumed by said
21 persons within this State for the preceding taxable year.



1 (c) If a seller collects the use tax under this chapter,
2 the amount of use tax shall be displayed separately from the
3 advertised price listed on the forms or advertising matter on
4 all sales checks, orders, sales slips, or other proof of sales."

5 SECTION 3. Section 238-1, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By amending the definition of "representation" to read:
8 "'Representation" refers to any or all of the following:

9 (1) A seller being present in the State;

10 (2) A seller having in the State a salesperson, commission
11 agent, manufacturer's representative, broker, or other
12 person who is authorized or employed by the seller to
13 assist the seller in selling property, services, or
14 contracting for use or consumption in the State, by
15 procuring orders for the sales, making collections or
16 deliveries, or otherwise; ~~and~~

17 (3) A seller having in the State a person upon whom
18 process directed to the seller from the courts of the
19 State may be served, including the director of
20 commerce and consumer affairs and the deputy director
21 in the cases provided in section 414-64 ~~[+]~~; or



1 (4) A seller who does not qualify for paragraphs (1) to
2 (3), but who sells online or through the Internet to
3 purchasers located in this State."

4 2. By amending the definition of "seller" to read:

5 "\"Seller\" means any person engaged in the business of
6 selling tangible personal property, services, or contracting,
7 wheresoever engaged, including through online or internet sales,
8 but does not include the United States or its wholly owned
9 agencies or instrumentalities other than national banks, the
10 State or a political subdivision thereof, or wholly owned
11 agencies or instrumentalities of the State or a political
12 subdivision."

13 3. By amending the definition of "use" to read:

14 "\"Use\" (and any nounal, verbal, adjectival, adverbial, and
15 other equivalent form of the term) herein used interchangeably
16 means any use, whether the use is of such nature as to cause the
17 property, services, or contracting to be appreciably consumed or
18 not, or the keeping of the property or services for such use or
19 for sale, the exercise of any right or power over tangible or
20 intangible personal property incident to the ownership of that
21 property, and shall include control over tangible or intangible



1 property by a seller who is licensed or who should be licensed
2 under chapter 237, who directs the importation of the property
3 into the State for sale and delivery to a purchaser in the
4 State, including through online or internet sales, liability and
5 free on board (FOB) to the contrary notwithstanding, regardless
6 of where title passes, but the term "use" shall not include:

7 (1) Temporary use of property, not of a perishable or
8 quickly consumable nature, where the property is
9 imported into the State for temporary use (not sale)
10 therein by the person importing the same and is not
11 intended to be, and is not, kept permanently in the
12 State. For example, without limiting the generality
13 of the foregoing language:

14 (A) In the case of a contractor importing permanent
15 equipment for the performance of a construction
16 contract, with intent to remove, and who does
17 remove, the equipment out of the State upon
18 completing the contract;

19 (B) In the case of moving picture films imported for
20 use in theaters in the State with intent or under



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



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



1 interstate air transportation. For purposes of this
2 paragraph, "leasing" includes all forms of lease,
3 regardless of whether the lease is an operating lease
4 or financing lease. The definition of "interstate air
5 transportation" is the same as in 49 U.S.C. 40102;

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

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

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

20 (10) The use of property, services, or contracting imported
21 by foreign diplomats and consular officials who are



S.B. NO. 1301

1 holding cards issued or authorized by the United
 2 States Department of State granting them an exemption
 3 from state taxes.

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

7 SECTION 4. This Act does not affect rights and duties that
 8 matured, penalties that were incurred, and proceedings that were
 9 begun before its effective date.

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

12 SECTION 6. This Act shall take effect upon its approval.

13

INTRODUCED BY:

[Handwritten signature]

~~SEN. D.C. Kent-Adams~~
Armine S. Prange
Barbara [unclear]



S.B. NO. 1301

Report Title:

Use Tax; Purchaser's Use Tax; Online and Internet Sales

Description:

Clarifies the obligation between the seller and purchaser to pay use taxes. Clarifies definitions of "representation", "seller", and "use" to include online and internet sales.

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

