



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 10, 2018

GOV. MSG. NO. 1275

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 10, 2018, the following bill was signed into law:

HB1605 HD1 SD1

RELATING TO AMENDING OR REPEALING
HAWAII GENERAL EXCISE TAX LAWS FOR THE
PURPOSE OF DELETING OBSOLETE OR
UNNECESSARY PROVISIONS
ACT 166 (18)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO AMENDING OR REPEALING HAWAII GENERAL EXCISE TAX LAWS
FOR THE PURPOSE OF DELETING OBSOLETE OR UNNECESSARY
PROVISIONS.

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

1 SECTION 1. The legislature finds that current statutory
2 language relating to the imposition of the general excise tax
3 contains provisions that are obsolete or unnecessary due to
4 subsequent amendments and legislative exemptions for particular
5 transactions, specifically:

6 (1) Section 237-29.5, Hawaii Revised Statutes, which
7 exempts transactions related to tangible personal
8 property in foreign or interstate commerce;

9 (2) Section 237-3, Hawaii Revised Statutes, which
10 specifies that "gross proceeds of sale" includes only
11 proceeds related to the sale of tangible personal
12 property and excludes proceeds related to sale of
13 securitized financial instruments or securitized
14 transactions; and



1 (3) Section 237-13(3)(B), Hawaii Revised Statutes, which
2 allows construction contractors to claim a deduction
3 for amounts paid to a subcontractor.

4 The purpose of this Act is to repeal certain obsolete or
5 unnecessary provisions in statutory language relating to the
6 imposition of the general excise tax in order to conform with
7 other controlling state tax statutes.

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

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

16 (1) Tax on manufacturers.

17 (A) Upon every person engaging or continuing within
18 the State in the business of manufacturing,
19 including compounding, canning, preserving,
20 packing, printing, publishing, milling,
21 processing, refining, or preparing for sale,



1 profit, or commercial use, either directly or
2 through the activity of others, in whole or in
3 part, any article or articles, substance or
4 substances, commodity or commodities, the amount
5 of the tax to be equal to the value of the
6 articles, substances, or commodities,
7 manufactured, compounded, canned, preserved,
8 packed, printed, milled, processed, refined, or
9 prepared for sale, as shown by the gross proceeds
10 derived from the sale thereof by the manufacturer
11 or person compounding, preparing, or printing
12 them, multiplied by one-half of one per cent.

13 (B) The measure of the tax on manufacturers is the
14 value of the entire product for sale[, regardless
15 ~~of the place of sale or the fact that deliveries~~
16 ~~may be made to points outside the State.~~

17 ~~(C) If any person liable for the tax on manufacturers~~
18 ~~ships or transports the person's product, or any~~
19 ~~part thereof, out of the State, whether in a~~
20 ~~finished or unfinished condition, or sells the~~
21 ~~same for delivery to points outside the State~~



1 ~~(for example, consigned to a mainland purchaser~~
2 ~~via common carrier f.o.b. Honolulu), the value of~~
3 ~~the products in the condition or form in which~~
4 ~~they exist immediately before entering interstate~~
5 ~~or foreign commerce, determined as hereinafter~~
6 ~~provided, shall be the basis for the assessment~~
7 ~~of the tax imposed by this paragraph. This tax~~
8 ~~shall be due and payable as of the date of entry~~
9 ~~of the products into interstate or foreign~~
10 ~~commerce, whether the products are then sold or~~
11 ~~not. The department shall determine the basis~~
12 ~~for assessment, as provided by this paragraph, as~~
13 ~~follows:~~

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



1 ~~transit, shall be the measure of the value~~
2 ~~of the products;~~

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



1 ~~best available data. The department shall~~
2 ~~prescribe uniform and equitable rules for~~
3 ~~ascertaining the values;~~

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

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

16 (2) Tax on business of selling tangible personal property;
17 producing.

18 (A) Upon every person engaging or continuing in the
19 business of selling any tangible personal
20 property whatsoever [~~not including, however,~~
21 ~~bonds or other evidence of indebtedness, or~~



1 stocks)], there is likewise hereby levied, and
2 shall be assessed and collected, a tax equivalent
3 to four per cent of the gross proceeds of sales
4 of the business; provided that, in the case of a
5 wholesaler, the tax shall be equal to one-half of
6 one per cent of the gross proceeds of sales of
7 the business; and provided further that insofar
8 as the sale of tangible personal property is a
9 wholesale sale under section 237-4(a)(8), the tax
10 shall be one-half of one per cent of the gross
11 proceeds. Upon every person engaging or
12 continuing within this State in the business of a
13 producer, the tax shall be equal to one-half of
14 one per cent of the gross proceeds of sales of
15 the business, or the value of the products, for
16 sale[, ~~if sold for delivery outside the State or~~
17 ~~shipped or transported out of the State, and the~~
18 ~~value of the products shall be determined in the~~
19 ~~same manner as the value of manufactured products~~
20 ~~covered in the cases under paragraph (1)(C)].~~



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

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



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

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



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

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



1 (F) The department, by rule, may require that a
2 seller take from the purchaser of tangible
3 personal property a certificate, in a form
4 prescribed by the department, certifying that the
5 sale is a sale at wholesale; provided that:

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

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

15 (3) Tax upon contractors.

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

20 (B) In computing the tax levied under this paragraph,
21 there shall be deducted from the gross income of



1 the taxpayer so much thereof as has been included
2 in the measure of the tax levied under
3 subparagraph (A), on[+
4 ~~(i) Another] another taxpayer who is a
5 contractor, as defined in section 237-6;
6 ~~[(ii) A specialty contractor, duly licensed by the
7 department of commerce and consumer affairs
8 pursuant to section 444-9, in respect of the
9 specialty contractor's business; or
10 (iii) A specialty contractor who is not licensed
11 by the department of commerce and consumer
12 affairs pursuant to section 444-9, but who
13 performs contracting activities on federal
14 military installations and nowhere else in
15 this State;]~~
16 provided that any person claiming a deduction
17 under this paragraph shall be required to show in
18 the person's return the name and general excise
19 number of the person paying the tax on the amount
20 deducted by the person.~~



1 (C) In computing the tax levied under this paragraph
2 against any federal cost-plus contractor, there
3 shall be excluded from the gross income of the
4 contractor so much thereof as fulfills the
5 following requirements:

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

13 (ii) The taxpayer making the sale shall have
14 certified to the department that the
15 taxpayer is taxable with respect to the
16 gross proceeds of the sale, and that the
17 taxpayer elects to have the tax on gross
18 income computed the same as upon a sale to
19 the state government.

20 (D) A person who, as a business or as a part of a
21 business in which the person is engaged, erects,



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



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



1 section 237-16.5, the tax shall be levied by
2 section 237-16.5.

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

5 (A) Upon every person engaging or continuing within
6 the State in the business of operating a theater,
7 opera house, moving picture show, vaudeville,
8 amusement park, dance hall, skating rink, radio
9 broadcasting station, or any other place at which
10 amusements are offered to the public, the tax
11 shall be equal to four per cent of the gross
12 income of the business, and in the case of a sale
13 of an amusement at wholesale under section 237-
14 4(a)(13), the tax shall be one-half of one per
15 cent of the gross income.

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



- 1 (i) Any licensed seller who furnishes a
2 certificate shall be obligated to pay to the
3 person rendering the amusement, upon demand,
4 the amount of additional tax that is imposed
5 upon the seller whenever the sale is not at
6 wholesale; and
- 7 (ii) The absence of a certificate in itself shall
8 give rise to the presumption that the sale
9 is not at wholesale unless the person
10 rendering the sale is exclusively rendering
11 the amusement at wholesale.
- 12 (5) Tax upon sales representatives, etc. Upon every
13 person classified as a representative or purchasing
14 agent under section 237-1, engaging or continuing
15 within the State in the business of performing
16 services for another, other than as an employee, there
17 is likewise hereby levied and shall be assessed and
18 collected a tax equal to four per cent of the
19 commissions and other compensation attributable to the
20 services so rendered by the person.
- 21 (6) Tax on service business.



1 (A) Upon every person engaging or continuing within
2 the State in any service business or calling
3 including professional services not otherwise
4 specifically taxed under this chapter, there is
5 likewise hereby levied and shall be assessed and
6 collected a tax equal to four per cent of the
7 gross income of the business, and in the case of
8 a wholesaler under section 237-4(a)(10), the tax
9 shall be equal to one-half of one per cent of the
10 gross income of the business.

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) Where any person is engaged in the business of
7 selling interstate or foreign common carrier
8 telecommunication services within and without the
9 State, other than as a home service provider, the
10 tax shall be imposed on that portion of gross
11 income received by a person from service which is
12 originated or terminated in this State and is
13 charged to a telephone number, customer, or
14 account in this State notwithstanding any other
15 state law (except for the exemption under section
16 237-23(a)(1)) to the contrary. If, under the
17 Constitution and laws of the United States, the
18 entire gross income as determined under this
19 paragraph of a business selling interstate or
20 foreign common carrier telecommunication services
21 cannot be included in the measure of the tax, the



1 gross income shall be apportioned as provided in
2 section 237-21; provided that the apportionment
3 factor and formula shall be the same for all
4 persons providing those services in the State.

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



1 services, as determined by books and records that
2 are kept in the regular course of business by the
3 home service provider in accordance with section
4 239-24, shall be apportioned under any
5 apportionment factor or formula adopted under
6 subparagraph (C). Gross income shall not
7 include:

- 8 (i) Gross receipts from mobile
9 telecommunications services provided to a
10 customer with a place of primary use outside
11 this State;
- 12 (ii) Gross receipts from mobile
13 telecommunications services that are subject
14 to the tax imposed by chapter 239;
- 15 (iii) Gross receipts from mobile
16 telecommunications services taxed under
17 section 237-13.8; and
- 18 (iv) Gross receipts of a home service provider
19 acting as a serving carrier providing mobile
20 telecommunications services to another home
21 service provider's customer.



1 For the purposes of this paragraph, "charges for
2 mobile telecommunications services", "customer",
3 "home service provider", "mobile
4 telecommunications services", "place of primary
5 use", and "serving carrier" have the same meaning
6 as in section 239-22.

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

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



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

10 (9) Tax on other business. Upon every person engaging or
11 continuing within the State in any business, trade,
12 activity, occupation, or calling not included in the
13 preceding paragraphs or any other provisions of this
14 chapter, there is likewise hereby levied and shall be
15 assessed and collected, a tax equal to four per cent
16 of the gross income thereof. In addition, the rate
17 prescribed by this paragraph shall apply to a business
18 taxable under one or more of the preceding paragraphs
19 or other provisions of this chapter, as to any gross
20 income thereof not taxed thereunder as gross income or



1 gross proceeds of sales or by taxing an equivalent
2 value of products, unless specifically exempted."

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

5 SECTION 4. This Act shall take effect on July 1, 2018.

APPROVED this 10 day of JUL , 2018



GOVERNOR OF THE STATE OF HAWAII



HB No. 1605, HD 1, SD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 18, 2018
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: March 27, 2018
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate of the Twenty-ninth Legislature of the State of Hawai'i, Regular Session of 2018.


President of the Senate


Clerk of the Senate