
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 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(b), Hawaii Revised Statutes, which
10 specifies that "taxable gross proceeds of sale"
11 include only proceeds related to sale of tangible
12 personal property and exclude proceeds related to sale
13 of securitized financial instruments or securitized
14 transactions;



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; and

4 (4) Chapter 239, Hawaii Revised Statutes, which exempts
5 gross income of public utilities, motor carriers, and
6 contract carriers subject to the public services
7 company tax.

8 The purpose of this Act is to repeal certain obsolete or
9 unnecessary provisions in statutory language relating to
10 imposition of the general excise tax for conformity with other
11 controlling state tax statutes.

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

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

20 (1) Tax on manufacturers.



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

18 (B) The measure of the tax on manufacturers is the
19 value of the entire product for sale [~~regardless~~
20 ~~of the place of sale or the fact that deliveries~~
21 ~~may be made to points outside the State.~~



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



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

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



H.B. NO. 1605

1 ~~character and in similar quantities, made by~~
2 ~~the taxpayer (unless not indicative of the~~
3 ~~true value) or by others. Sales outside the~~
4 ~~State, adjusted as provided in clause (i),~~
5 ~~may be considered when they constitute the~~
6 ~~best available data. The department shall~~
7 ~~prescribe uniform and equitable rules for~~
8 ~~ascertaining the values;~~
9 ~~(iii) At the election of the taxpayer and with the~~
10 ~~approval of the department, the taxpayer may~~
11 ~~make the taxpayer's returns under clause (i)~~
12 ~~even though the products have not been sold~~
13 ~~at the time of their entry into interstate~~
14 ~~or foreign commerce; and~~
15 ~~(iv) In all cases in which products leave the~~
16 ~~State in an unfinished condition, the basis~~
17 ~~for assessment shall be adjusted so as to~~
18 ~~deduct the portion of the value as is~~
19 ~~attributable to the finishing of the goods~~
20 ~~outside the State].~~



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

3 (A) Upon every person engaging or continuing in the
4 business of selling any tangible personal
5 property whatsoever [~~not including, however,~~
6 ~~bonds or other evidence of indebtedness, or~~
7 ~~stocks~~], there is likewise hereby levied, and
8 shall be assessed and collected, a tax equivalent
9 to four per cent of the gross proceeds of sales
10 of the business; provided that, in the case of a
11 wholesaler, the tax shall be equal to one-half of
12 one per cent of the gross proceeds of sales of
13 the business; and provided further that insofar
14 as the sale of tangible personal property is a
15 wholesale sale under section 237-4(a)(8), the tax
16 shall be one-half of one per cent of the gross
17 proceeds. Upon every person engaging or
18 continuing within this State in the business of a
19 producer, the tax shall be equal to one-half of
20 one per cent of the gross proceeds of sales of
21 the business, or the value of the products, for



1 ~~sale[, if sold for delivery outside the State or~~
2 ~~shipped or transported out of the State, and the~~
3 ~~value of the products shall be determined in the~~
4 ~~same manner as the value of manufactured products~~
5 ~~covered in the cases under paragraph (1)(C)].~~

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

20 (C) No manufacturer or producer, engaged in such
21 business in the State and selling the



1 manufacturer's or producer's products for
2 delivery outside of the State (for example,
3 consigned to a mainland purchaser via common
4 carrier f.o.b. Honolulu), shall be required to
5 pay the tax imposed in this chapter for the
6 privilege of so selling the products, and the
7 value or gross proceeds of sales of the products
8 shall be included only in determining the measure
9 of the tax imposed upon the manufacturer or
10 producer.

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



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

20 (E) A taxpayer selling to a federal cost-plus
21 contractor may make the election provided for by



1 paragraph (3) (C), and in that case the tax shall
2 be computed pursuant to the election,
3 notwithstanding this paragraph or paragraph (1)
4 to the contrary.

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

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

15 (ii) The absence of a certificate in itself shall
16 give rise to the presumption that the sale
17 is not at wholesale unless the sales of the
18 business are exclusively at wholesale.

19 (3) Tax upon contractors.

20 (A) Upon every person engaging or continuing within
21 the State in the business of contracting, the tax



1 shall be equal to four per cent of the gross
2 income of the business.

3 (B) In computing the tax levied under this paragraph,
4 there shall be deducted from the gross income of
5 the taxpayer so much thereof as has been included
6 in the measure of the tax levied under
7 subparagraph (A), on[+

8 ~~(i) Another]~~ another taxpayer who is a
9 contractor, as defined in section 237-6;

10 ~~[(ii) A specialty contractor, duly licensed by the
11 department of commerce and consumer affairs
12 pursuant to section 444-9, in respect of the
13 specialty contractor's business; or~~

14 ~~(iii) A specialty contractor who is not licensed
15 by the department of commerce and consumer
16 affairs pursuant to section 444-9, but who
17 performs contracting activities on federal
18 military installations and nowhere else in
19 this State;]~~

20 provided that any person claiming a deduction
21 under this paragraph shall be required to show in



1 the person's return the name and general excise
2 number of the person paying the tax on the amount
3 deducted by the person.

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

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

16 (ii) The taxpayer making the sale shall have
17 certified to the department that the
18 taxpayer is taxable with respect to the
19 gross proceeds of the sale, and that the
20 taxpayer elects to have the tax on gross



1 income computed the same as upon a sale to
2 the state government.

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



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



1 under paragraph (9); provided that insofar as the
2 business of renting or leasing real property
3 under a lease is taxed under section 237-16.5,
4 the tax shall be levied by section 237-16.5.

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

7 (A) Upon every person engaging or continuing within
8 the State in the business of operating a theater,
9 opera house, moving picture show, vaudeville,
10 amusement park, dance hall, skating rink, radio
11 broadcasting station, or any other place at which
12 amusements are offered to the public, the tax
13 shall be equal to four per cent of the gross
14 income of the business, and in the case of a sale
15 of an amusement at wholesale under section 237-
16 4(a)(13), the tax shall be one-half of one per
17 cent of the gross income.

18 (B) The department may require that the person
19 rendering an amusement at wholesale take from the
20 licensed seller 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 licensed seller who furnishes a
4 certificate shall be obligated to pay to the
5 person rendering the amusement, upon demand,
6 the amount of additional tax that is imposed
7 upon the seller whenever the sale is not at
8 wholesale; and

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

14 (5) Tax upon sales representatives, etc. Upon every
15 person classified as a representative or purchasing
16 agent under section 237-1, engaging or continuing
17 within the State in the business of performing
18 services for another, other than as an employee, there
19 is likewise hereby levied and shall be assessed and
20 collected a tax equal to four per cent of the



1 commissions and other compensation attributable to the
2 services so rendered by the person.

3 (6) Tax on service business.

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

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

19 (i) Any licensed seller who furnishes a
20 certificate shall be obligated to pay to the
21 person rendering the service, upon demand,



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

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

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



1 determined under this paragraph of a business
2 selling interstate or foreign common carrier
3 telecommunication services cannot be included in
4 the measure of the tax, the gross income shall be
5 apportioned as provided in section 237-21;
6 provided that the apportionment factor and
7 formula shall be the same for all persons
8 providing those services in the State.

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



1 where the mobile telecommunications originate,
2 terminate, or pass through; provided further that
3 the income from charges specifically derived from
4 interstate or foreign mobile telecommunications
5 services, as determined by books and records that
6 are kept in the regular course of business by the
7 home service provider in accordance with section
8 239-24, shall be apportioned under any
9 apportionment factor or formula adopted under
10 subparagraph (C). Gross income shall not
11 include:

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

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

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



1 (iv) Gross receipts of a home service provider
2 acting as a serving carrier providing mobile
3 telecommunications services to another home
4 service provider's customer.

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

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

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



1 thereto, there is hereby levied a tax of one-half of
2 one per cent of the gross amount received; provided
3 that the tax levied hereunder on any amount so
4 received and actually disbursed to another by a
5 producer in the form of a benefit payment shall be
6 paid by the person or persons to whom the amount is
7 actually disbursed, and the producer actually making a
8 benefit payment to another shall be entitled to claim
9 on the producer's return a deduction from the gross
10 amount taxable hereunder in the sum of the amount so
11 disbursed. The amounts taxed under this paragraph
12 shall not be taxable under any other paragraph,
13 subsection, or section of this chapter.

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



1 taxable under one or more of the preceding paragraphs
 2 or other provisions of this chapter, as to any gross
 3 income thereof not taxed thereunder as gross income or
 4 gross proceeds of sales or by taxing an equivalent
 5 value of products, unless specifically exempted."

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

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

9

INTRODUCED BY:



JAN 10 2018



H.B. NO. 1605

Report Title:

General Excise Tax; Repeal of Obsolete or Unnecessary Provisions

Description:

Removes unnecessary or redundant provisions of the general excise tax laws.

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

