

---

---

# 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 shall be taxable  
18 under paragraph (9); provided that insofar as the  
19 business of renting or leasing real property  
20 under a lease is taxed under section 237-16.5,  
21 the tax shall be levied by section 237-16.5.



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

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

18                  (6) 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, there is  
2 likewise hereby levied and shall be assessed and  
3 collected a tax equal to four per cent of the  
4 gross income of the business, and in the case of  
5 a wholesaler under section 237-4(a)(10), the tax  
6 shall be equal to one-half of one per cent of the  
7 gross income of the business.

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

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

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



1 rendering the sale is exclusively rendering  
2 services at wholesale.

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



1 factor and formula shall be the same for all  
2 persons providing those services in the State.

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



1 home service provider in accordance with section  
2 239-24, shall be apportioned under any  
3 apportionment factor or formula adopted under  
4 subparagraph (C). Gross income shall not  
5 include:

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

20 For the purposes of this paragraph, "charges for  
21 mobile telecommunications services", "customer",



1 "home service provider", "mobile  
2 telecommunications services", "place of primary  
3 use", and "serving carrier" have the same meaning  
4 as in section 239-22.

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

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



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

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



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

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



**Report Title:**

General Excise Tax; Repeal of Obsolete or Unnecessary Provisions

**Description:**

Removes unnecessary or redundant provisions of the general excise tax laws. (HB1605 HD1)

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

