
A BILL FOR AN ACT

RELATING TO TAXATION.

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

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

3 1. By adding a new definition to be appropriately inserted
4 and to read:

5 "Marketplace provider" means any person who sells or
6 assists in the sale of tangible personal property on behalf of
7 another seller and who provides customer service, processes
8 payments, and controls the fulfillment process."

9 2. By amending the definition of "person" or "company" to
10 read as follows:

11 "Person" or "company" includes every individual,
12 partnership, society, unincorporated association, joint
13 adventure, group, hui, joint stock company, corporation,
14 trustee, personal representative, trust estate, decedent's
15 estate, trust, trustee in bankruptcy, or other entity, whether
16 such persons are doing business for themselves or in a fiduciary
17 capacity, and whether the individuals are residents or



1 nonresidents of the State, and whether the corporation or other
2 association is created or organized under the laws of the State
3 or of another jurisdiction. Any person who ~~[has in the person's~~
4 ~~possession, for sale in the State, the property of a nonresident~~
5 ~~owner, other than as an employee of such owner,]~~ sells or
6 assists in the sale of tangible personal property on behalf of
7 another seller by providing customer service, processing
8 payments, and controlling the fulfillment process shall be
9 deemed the seller of the property, when sold~~[,]~~, and the seller
10 on whose behalf the sale is made shall be deemed to have made a
11 sale at wholesale pursuant to section 237-4."

12 3. By amending the definition of "representative" to read
13 as follows:

14 "Representative" means any salesperson, commission agent,
15 manufacturer's representative, broker or other person who is
16 authorized or employed by ~~[an unlicensed]~~ a seller to assist
17 such seller in selling property for use in the State, by
18 procuring orders for such sales or otherwise, and who carries on
19 such activities in the State, it being immaterial whether such
20 activities are regular or intermittent~~[, but the]~~. The term
21 "representative" does not include [a]:



(1) A manufacturer's representative whose functions are wholly promotional and to act as liaison between an unlicensed seller and a seller or sellers, and which do not include the procuring, soliciting or accepting of orders for property or the making of deliveries of property, or the collecting of payment for deliveries of property, or the keeping of books of account concerning property orders, deliveries or collections transpiring between an unlicensed seller and a seller or sellers~~[. Any unlicensed seller who in person carries on any such activity in the State shall also be classed as a representative.]~~; and

(2) A person who sells or assists in the sale of tangible personal property on behalf of another seller and who provides customer service, processes payments, and controls the fulfillment process."

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

"§237-2 "Business", "engaging" in business, defined. As used in this chapter:



1 "Business" includes all activities (personal, professional,
2 or corporate) engaged in or caused to be engaged in with the
3 object of gain or economic benefit either direct or indirect,
4 without regard to physical presence in the State, but does not
5 include casual sales. A person with no physical presence in the
6 State is engaged in business in this State if, in the current or
7 immediately preceding calendar year, the person has gross
8 receipts attributable to transactions in this State totaling
9 \$100,000 or more. Gross receipts attributable to transactions
10 in this State include gross receipts from sales that, but for
11 the seller's lack of physical presence, would be taxable under
12 this chapter and are facilitated by a marketplace provider that
13 is engaged in business in this State.

14 "Engaging", with reference to engaging or continuing in
15 business, includes the exercise of corporate or franchise
16 powers."

17 SECTION 3. Section 238-1, Hawaii Revised Statutes, is
18 amended by amending the definition of "import" to read as
19 follows:

20 "'Import" (or any nounal, verbal, adverbial, adjective, or
21 other equivalent of the term) includes:



1 (1) The importation into the State of tangible property,
2 services, or contracting owned, purchased from an
3 unlicensed seller, or however acquired, from any other
4 part of the United States or its possessions or from
5 any foreign country, whether in interstate or foreign
6 commerce, or both; ~~and~~

7 (2) The sale and delivery of tangible personal property
8 owned, purchased from an unlicensed seller, or however
9 acquired, by a seller who is or should be licensed
10 under the general excise tax law from an out-of-state
11 location to an in-state purchaser, regardless of the
12 free on board point or the place where title to the
13 property transfers to the purchaser[-]; and

14 (3) The sale of tangible personal property by, or assisted
15 by, a licensed seller who provides customer service,
16 processes payments, and controls the fulfillment
17 process on behalf of an unlicensed seller for delivery
18 to a purchaser in the State."

19 SECTION 4. If any provision of this Act, or the
20 application thereof to any person or circumstance, is held
21 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

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

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



Report Title:

General Excise Tax; Use Tax; Tangible Personal Property;
Marketplace Provider

Description:

Amends the general excise tax law by adding a definition for "marketplace provider". Provides that a person with no physical presence in the State shall be considered to be engaged in business in the State if, in the current or immediately preceding calendar year, the person has gross receipts attributable to transactions in the State totaling \$100,000 or more. Clarifies that a person who sells or assists in the sale of tangible personal property and who provides customer service, processes payments, and controls fulfillment is the seller of the property for general excise tax and use tax purposes. (SD2)

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