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# A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

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

1           SECTION 1. The legislature recognizes that, pursuant to  
2 title 49 United States Code section 40116(b), the State is  
3 prohibited from imposing general excise taxes on the transport  
4 of passengers traveling in air commerce, and the sale of air  
5 transportation. The legislature also recognizes that the  
6 applicable federal law defines "air commerce" and "air  
7 transportation" to include interstate air commerce and  
8 interstate air transportation, both of which effectively include  
9 air transportation from one island of the State to another. The  
10 legislature finds, however, that federal law does not prohibit  
11 the State from imposing general excise taxes on the air  
12 transport of passengers when the transport is restricted to a  
13 single island.

14           The legislature further finds that, in Hawaii, many common  
15 carriers operate aircraft on routes that do not take passengers  
16 on interstate trips, such as helicopters used in the commercial  
17 touring of a single island. However, the legislature finds that



1 even when these aircraft operate solely within a single island,  
2 the department of taxation does not require their respective  
3 carriers to pay general excise tax on fares collected. The  
4 legislature further finds that this lack of collection is based  
5 on a misapplication of the decision rendered by the Supreme  
6 Court of the United States in *Aloha Airlines, Inc. v. Director*  
7 *of Taxation of Hawaii*, 464 U.S. 7 (1983). While the Supreme  
8 Court made clear that federal law proscribes the imposition of  
9 state and local tax on gross receipts derived from air  
10 transportation or the carriage of persons in air commerce, the  
11 decision must be read with the proper understanding of the  
12 federally-defined terms "air transportation" and "air commerce",  
13 both of which exclude intraisland travel. The legislature  
14 therefore concludes that the State may impose the general excise  
15 tax on aircraft tours that travel solely within a single island,  
16 without running afoul of the court's decision.

17 The purpose of this Act is to ensure the collection of the  
18 state general excise tax in instances in which the  
19 transportation of passengers is furnished by common carriers by  
20 the use of aircraft when the collection of the tax is not  
21 prohibited by federal law.



1 SECTION 2. Section 237-18, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§237-18 Further provisions as to application of tax. (a)

4 Where a coin operated device produces gross income [~~which~~] that  
5 is divided between the owner or operator of the device, on the  
6 one hand, and the owner or operator of the premises where the  
7 device is located, on the other hand, the tax imposed by this  
8 chapter shall apply to each [~~such~~] person with respect to the  
9 person's portion of the proceeds, and no more.

10 (b) Where gate receipts or other admissions are divided  
11 between the person furnishing or producing a play, concert,  
12 lecture, athletic event, or similar spectacle (including any  
13 motion picture showing) on the one hand, and a promoter  
14 (including any proprietor or other operator of a motion picture  
15 house) offering the spectacle to the public, on the other hand,  
16 the tax imposed by this chapter, if the promoter is subject to  
17 the tax imposed by this chapter, shall apply only to the  
18 promoter measured by the whole of the proceeds, and the promoter  
19 shall be authorized to deduct and withhold from the portion of  
20 the proceeds payable to the person furnishing or producing the  
21 spectacle the amount of the tax payable by the person upon



1 [sueh] that portion. No tax shall apply to a promoter with  
2 respect to [sueh] the portion of the proceeds as is payable to a  
3 person furnishing or producing the spectacle, who is exempted by  
4 section 237-23 from taxation upon [sueh] the activity.

5 (c) Where, through the activity of a person taxable under  
6 section 237-13(6), a product has been milled, processed, or  
7 otherwise manufactured upon the order of another taxpayer who is  
8 a manufacturer taxable upon the value of the entire manufactured  
9 products, which consists in part of the value of the services  
10 taxable under section 237-13(6), so much gross income as is  
11 derived from the rendering of the services shall be subjected to  
12 tax on the person rendering the services at the rate of one-half  
13 of one per cent, and the value of the entire product shall be  
14 included in the measure of the tax imposed on the other taxpayer  
15 as elsewhere provided.

16 (d) Where, through the activity of a person taxable under  
17 section 237-13(6), there have been rendered to a cane planter  
18 services consisting in the harvesting or hauling of the cane, or  
19 consisting in road maintenance, under a contract between the  
20 person rendering the services and the cane planter, covering the  
21 services and also the milling of the sugar, the services of



1 harvesting and hauling the cane and road maintenance shall be  
2 treated the same as the service of milling the cane, as provided  
3 by subsection (c), and the value of the entire product,  
4 manufactured or sold for the cane planter under the contract,  
5 shall be included in the measure of the tax imposed on the  
6 person as elsewhere provided.

7 (e) Where insurance agents, including general agents,  
8 subagents, or solicitors, who are not employees and are licensed  
9 pursuant to chapter 431, or real estate brokers or salespersons,  
10 who are not employees and are licensed pursuant to chapter 467,  
11 produce commissions which are divided between such general  
12 agents, subagents, or solicitors, or between such real estate  
13 brokers or salespersons, as the case may be, the tax levied  
14 under section 237-13(6) as to real estate brokers or  
15 salespersons, or under section 237-13(7) as to insurance general  
16 agents, subagents, or solicitors shall apply to each [such]  
17 person with respect to the person's portion of the commissions,  
18 and no more.

19 (f) Where tourism related services are furnished through  
20 arrangements made by a travel agency or tour packager and the  
21 gross income is divided between the provider of the services and



1 the travel agency or tour packager, the tax imposed by this  
2 chapter shall apply to each [such] person with respect to [such]  
3 the person's respective portion of the proceeds, and no more.

4 As used in this subsection "tourism related services" means  
5 catamaran cruises, canoe rides, dinner cruises, lei greetings,  
6 transportation included in a tour package, sightseeing tours not  
7 subject to chapter 239, admissions to luaus, dinner shows,  
8 extravaganzas, cultural and educational facilities, and other  
9 services rendered directly to the customer or tourist, but only  
10 if the providers of the services other than air transportation  
11 are subject to a four per cent tax under this chapter or chapter  
12 239.

13 (g) Where transient accommodations are furnished through  
14 arrangements made by a travel agency or tour packager at  
15 noncommissioned negotiated contract rates and the gross income  
16 is divided between the operator of transient accommodations on  
17 the one hand and the travel agency or tour packager on the other  
18 hand, the tax imposed by this chapter shall apply to each [such]  
19 person with respect to [such] each person's respective portion  
20 of the proceeds, and no more.



1 As used in this subsection, the words "transient  
2 accommodations" and "operator" shall be defined in the same  
3 manner as they are defined in section 237D-1.

4 (h) Where the transportation of passengers or property is  
5 furnished through arrangements between motor carriers, and the  
6 gross income is divided between the motor carriers, any tax  
7 imposed by this chapter shall apply to each motor carrier with  
8 respect to each motor carrier's respective portion of the  
9 proceeds.

10 (i) Where the transportation of passengers is furnished by  
11 a common carrier by the use of aircraft, any tax imposed by this  
12 chapter shall apply; provided that the transportation furnished  
13 begins and ends within the airspace of a single island of the  
14 State and is therefore not considered:

15 (1) Air commerce; or

16 (2) Air transportation,

17 as defined by title 49 United States Code section 40102.

18 (j) As used in this [~~subsection~~] section:

19 "Carrier" means a person who engages in transportation, and  
20 does not include a person such as a freight forwarder or tour  
21 packager who provides transportation by contracting with others,



1 except to the extent that [~~such~~] the person oneself engages in  
2 transportation.

3 "Contract carrier" means a person other than a public  
4 utility as defined under section 239-2 or taxicab, which under  
5 contracts or agreements, engages in the transportation of  
6 persons or property for compensation, by land, water, or air.

7 "Motor carrier" means a common carrier or contract carrier  
8 transporting persons or property for compensation on the public  
9 highways, other than a public utility as defined under section  
10 239-2 or taxicab.

11 "Public highways" has the meaning defined by section 264-1  
12 including both state and county highways, but operation upon  
13 rails shall not be deemed transportation on the public  
14 highways."

15 SECTION 3. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun before its effective date.

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



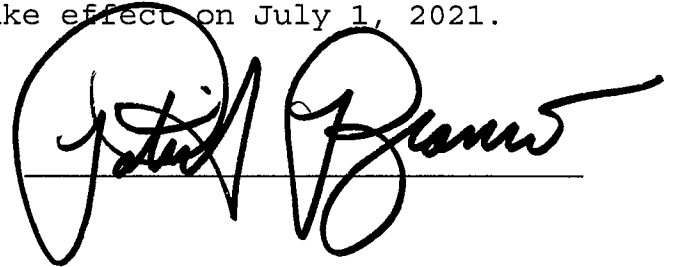


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1 SECTION 5. This Act shall take effect on July 1, 2021.

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INTRODUCED BY:

A handwritten signature in black ink, appearing to read "John Blanton", is written over a horizontal line. The signature is stylized and cursive.

JAN 22 2021



# H.B. NO. 408

**Report Title:**

Transportation; Taxation; Aircraft

**Description:**

Ensures the collection of the state general excise tax in instances in which the transportation of passengers is furnished by common carriers by the use of aircraft when the collection of the tax is not prohibited by federal law. Limits imposition of tax to flights that occur within the airspace of a single island of the State.

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

