

JAN 19 2022

A BILL FOR AN ACT

RELATING TO THE GENERAL EXCISE TAX.

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

1 SECTION 1. The legislature finds that, under the general
2 excise tax law, wholesalers who sell goods for resale are not
3 taxed at the typical four per cent rate. Instead, they are
4 taxed at a lower rate of one-half of one per cent. However,
5 some wholesalers are improperly claiming the lower tax rate even
6 when the wholesaler has knowledge that the resale will not be
7 taxed at the four per cent rate.

8 Accordingly, the purpose of this Act is to clarify that a
9 sale only qualifies for the wholesale tax rate if the resale
10 will be taxed at the highest rate under the general excise tax
11 law.

12 SECTION 2. Section 237-4, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) "Wholesaler" or "jobber" applies only to a person
15 making sales at wholesale. Only the following are sales at
16 wholesale:



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- 1 (1) Sales to a licensed retail merchant, jobber, or other
2 licensed seller for [~~purposes of~~] resale; provided
3 that the resale is subject to the tax imposed under
4 this chapter at the highest rate;
- 5 (2) Sales to a licensed manufacturer of materials or
6 commodities that are to be incorporated by the
7 manufacturer into a finished or saleable product
8 (including the container or package in which the
9 product is contained) during the course of its
10 preservation, manufacture, or processing, including
11 preparation for market, and that will remain in such
12 finished or saleable product in such form as to be
13 perceptible to the senses, which finished or saleable
14 product is to be sold and not otherwise used by the
15 manufacturer;
- 16 (3) Sales to a licensed producer or cooperative
17 association of materials or commodities that are to be
18 incorporated by the producer or by the cooperative
19 association into a finished or saleable product that
20 is to be sold and not otherwise used by the producer
21 or cooperative association, including specifically



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1 materials or commodities expended as essential to the
2 planting, growth, nurturing, and production of
3 commodities that are sold by the producer or by the
4 cooperative association;

5 (4) Sales to a licensed contractor, of materials or
6 commodities that are to be incorporated by the
7 contractor into the finished work or project required
8 by the contract and that will remain in such finished
9 work or project in such form as to be perceptible to
10 the senses;

11 (5) Sales to a licensed producer, or to a cooperative
12 association described in section [‡]237-23(a)(8)[‡]
13 for sale to a licensed producer, or to a licensed
14 person operating a feed lot, of poultry or animal
15 feed, hatching eggs, semen, replacement stock,
16 breeding services for the purpose of raising or
17 producing animal or poultry products for disposition
18 as described in section 237-5 or for incorporation
19 into a manufactured product as described in
20 paragraph (2) or for the purpose of breeding,
21 hatching, milking, or egg laying other than for the



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1 customer's own consumption of the meat, poultry, eggs,
2 or milk so produced; provided that in the case of a
3 feed lot operator, only the segregated cost of the
4 feed furnished by the feed lot operator as part of the
5 feed lot operator's service to a licensed producer of
6 poultry or animals to be butchered or to a cooperative
7 association described in section [+]237-23(a)(8)[+] of
8 such licensed producers shall be deemed to be a sale
9 at wholesale; and provided further that any amount
10 derived from the furnishing of feed lot services,
11 other than the segregated cost of feed, shall be
12 deemed taxable at the service business rate. This
13 paragraph shall not apply to the sale of feed for
14 poultry or animals to be used for hauling,
15 transportation, or sports purposes;

16 (6) Sales to a licensed producer, or to a cooperative
17 association described in section [+]237-23(a)(8)[+]
18 for sale to the producer, of seed or seedstock for
19 producing agricultural and aquacultural products, or
20 bait for catching fish (including the catching of bait
21 for catching fish), which agricultural and



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1 aquacultural products or fish are to be disposed of as
2 described in section 237-5 or to be incorporated in a
3 manufactured product as described in paragraph (2);
4 (7) Sales to a licensed producer, or to a cooperative
5 association described in section [†]237-23(a)(8)[†]
6 for sale to such producer; of polypropylene shade
7 cloth; of polyfilm; of polyethylene film; of cartons
8 and such other containers, wrappers, and sacks, and
9 binders to be used for packaging eggs, vegetables,
10 fruits, and other agricultural and aquacultural
11 products; of seedlings and cuttings for producing
12 nursery plants or aquacultural products; or of chick
13 containers; which cartons and such other containers,
14 wrappers, and sacks, binders, seedlings, cuttings, and
15 containers are to be used as described in section
16 237-5, or to be incorporated in a manufactured product
17 as described in paragraph (2);
18 (8) Sales of tangible personal property where:
19 (A) Tangible personal property is sold upon the order
20 or request of a licensed seller for the purpose
21 of rendering a service in the course of the



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1 person's service business or calling, or upon the
2 order or request of a person subject to tax under
3 section 237D-2 for the purpose of furnishing
4 transient accommodations;

5 (B) The tangible personal property becomes or is used
6 as an identifiable element of the service
7 rendered; [~~and~~]

8 (C) The cost of the tangible personal property does
9 not constitute overhead to the licensed seller;
10 and

11 (D) The resale of the service or tangible personal
12 property is subject to the tax imposed under this
13 chapter at the highest tax rate;

14 (9) Sales to a licensed leasing company of capital goods
15 that have a depreciable life, are purchased by the
16 leasing company for lease to its customers, and are
17 thereafter leased as a service to others;

18 (10) Sales of services to a licensed seller engaging in a
19 business or calling whenever:

20 (A) Either:



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1 (i) In the context of a service-to-service
2 transaction, a service is rendered upon the
3 order or request of a licensed seller for
4 the purpose of rendering another service in
5 the course of the seller's service business
6 or calling, including a dealer's furnishing
7 of goods or services to the purchaser of
8 tangible personal property to fulfill a
9 warranty obligation of the manufacturer of
10 the property;

11 (ii) In the context of a service-to-tangible
12 personal property transaction, a service is
13 rendered upon the order or request of a
14 licensed seller for the purpose of
15 manufacturing, producing, or preparing
16 tangible personal property to be sold;

17 (iii) In the context of a services-to-contracting
18 transaction, a service is rendered upon the
19 order or request of a licensed contractor as
20 defined in section 237-6 for the purpose of
21 assisting that licensed contractor; or



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- 1 (iv) In the context of a services-to-transient
2 accommodations rental transaction, a service
3 is rendered upon the order or request of a
4 person subject to tax under section 237D-2
5 for the purpose of furnishing transient
6 accommodations;
- 7 (B) The benefit of the service passes to the customer
8 of the licensed seller, licensed contractor, or
9 person furnishing transient accommodations as an
10 identifiable element of the other service or
11 property to be sold, the contracting, or the
12 furnishing of transient accommodations;
- 13 (C) The cost of the service does not constitute
14 overhead to the licensed seller, licensed
15 contractor, or person furnishing transient
16 accommodations;
- 17 (D) The gross income of the licensed seller is not
18 divided between the licensed seller and another
19 licensed seller, contractor, or person furnishing
20 transient accommodations for imposition of the
21 tax under this chapter;



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1 (E) The gross income of the licensed seller is not
2 subject to a deduction under this chapter or
3 chapter 237D; and

4 (F) The resale of the service, tangible personal
5 property, contracting, or transient
6 accommodations is subject to the tax imposed
7 under this chapter at the highest tax rate.

8 (11) Sales to a licensed retail merchant, jobber, or other
9 licensed seller of bulk condiments or prepackaged
10 single-serving packets of condiments that are provided
11 to customers by the licensed retail merchant, jobber,
12 or other licensed seller;

13 (12) Sales to a licensed retail merchant, jobber, or other
14 licensed seller of tangible personal property that
15 will be incorporated or processed by the licensed
16 retail merchant, jobber, or other licensed seller into
17 a finished or saleable product during the course of
18 its preparation for market (including disposable,
19 nonreturnable containers, packages, or wrappers, in
20 which the product is contained and that are generally
21 known and most commonly used to contain food or



1 beverage for transfer or delivery), and which finished
2 or saleable product is to be sold and not otherwise
3 used by the licensed retail merchant, jobber, or other
4 licensed seller;

5 (13) Sales of amusements subject to taxation under section
6 237-13(4) to a licensed seller engaging in a business
7 or calling whenever:

8 (A) Either:

9 (i) In the context of an amusement-to-service
10 transaction, an amusement is rendered upon
11 the order or request of a licensed seller
12 for the purpose of rendering another service
13 in the course of the seller's service
14 business or calling;

15 (ii) In the context of an amusement-to-tangible
16 personal property transaction, an amusement
17 is rendered upon the order or request of a
18 licensed seller for the purpose of selling
19 tangible personal property; or

20 (iii) In the context of an amusement-to-amusement
21 transaction, an amusement is rendered upon



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1 the order or request of a licensed seller
2 for the purpose of rendering another
3 amusement in the course of the person's
4 amusement business;

5 (B) The benefit of the amusement passes to the
6 customer of the licensed seller as an
7 identifiable element of the other service,
8 tangible personal property to be sold, or
9 amusement;

10 (C) The cost of the amusement does not constitute
11 overhead to the licensed seller;

12 (D) The gross income of the licensed seller is not
13 divided between the licensed seller and another
14 licensed seller, person furnishing transient
15 accommodations, or person rendering an amusement
16 for imposition of the tax under chapter 237;

17 (E) The gross income of the licensed seller is not
18 subject to a deduction under this chapter; and

19 (F) The resale of the service, tangible personal
20 property, or amusement is subject to the tax
21 imposed under this chapter at the highest rate.



1 As used in this paragraph, "amusement" means
2 entertainment provided as part of a show for which
3 there is an admission charge; and
4 (14) Sales by a printer to a publisher of magazines or
5 similar printed materials containing advertisements,
6 when the publisher is under contract with the
7 advertisers to distribute a minimum number of
8 magazines or similar printed materials to the public
9 or defined segment of the public, whether or not there
10 is a charge to the persons who actually receive the
11 magazines or similar printed materials."

12 SECTION 3. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

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

17 SECTION 5. This Act shall take effect on July 1, 2022.

18

INTRODUCED BY: _____

A large, stylized handwritten signature in black ink is written over a horizontal line. The signature is highly cursive and appears to be the initials 'JDK'.

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Report Title:

General Excise Tax; Wholesale Sales

Description:

Clarifies that, under the general excise tax law, sales to a licensed retail merchant, jobber, or other licensed seller for resale are only eligible for the wholesale tax rate if the resale is subject to the highest general excise tax rate. Adds a similar requirement for sales of tangible personal property to a service provider or for the purpose of providing transient accommodations.

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