

A Bill for an Act Relating to General Excise Taxation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately numbered and to read as follows:

“Sec. 237- Exemption of certain shipbuilding and ship repair business. There shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter all of the gross proceeds arising from shipbuilding and ship repairs rendered to surface vessels federally owned or engaged in interstate or international trade.”

SECTION 2. Section 237-4, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 237-4 ‘Wholesaler’, ‘jobber’, defined. ‘Wholesaler’ or ‘jobber’ applies only to a person making sales at wholesale. Only the following are sales at wholesale:

- (1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;
- (2) Sales to a licensed manufacturer of material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and which will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer; or
- (3) Sales to a licensed contractor, of material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses; or
- (4) Sales to a licensed producer, or to a cooperative association described in section 237-23(10) for sale to such producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacing stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2) of this section or for the purpose of breeding, hatching, milking, or egg laying other than for the customer's own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by him as part to be butchered or to a cooperative association described in section 237-23(10) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph (4) shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;
- (5) Sales to a licensed producer, or to a cooperative association described in section 237-23(10) for sale to the producer, of seed for producing agricultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2) of this section; or;
- (6) Sales to a licensed producer, or to a cooperative association described in section 237-23(10) for sale to such producer; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural products; of seedlings and cuttings for producing nursery plants; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2) of this section.

- (7) Sales of tangible personal property to a licensed person engaged in the service business, provided that (1) said property is not consumed or incidental to the performance of the services; (2) there is a resale of said article at the retail rate of 4 per cent; and (3) the resale of said article is separately charged or billed by the person rendering the services.
- (8) Sales to a licensed leasing company which leases capital goods as a service to others. As used in this paragraph capital goods are goods which have a depreciable life of more than three years.

If the use tax law is finally held by a court of competent jurisdiction to be unconstitutional or invalid insofar as it purports to tax the use or consumption of tangible personal property imported into the State in interstate or foreign commerce or both, wholesalers and jobbers shall be taxed thereafter under this chapter in accordance with the following definition (which shall supersede the preceding paragraph otherwise defining 'wholesaler' or 'jobber'): 'Wholesaler' or 'jobber' means a person, or a definitely organized division thereof, definitely organized to render and rendering a general distribution service which buys and maintains at his or its place of business a stock or lines of merchandise which he or it distributes; and which, through salesmen, advertising, or sales promotion devices, sells to licensed retailers, to institutional or licensed commercial or industrial users, in wholesale quantities and at wholesale rates. A corporation deemed not to be carrying on a trade or business in this State under section 235-6 shall nevertheless be deemed to be a wholesaler and shall be subject to the tax imposed by this chapter."

SECTION 3. Section 237-6, Hawaii Revised Statutes is amended to read:

"Sec. 237-6. 'Contractor', 'federal cost-plus contractor', defined. 'Contractor' includes, for the purpose of this chapter:

- (1) Every person engaging in the business of contracting to erect, construct, repair or improve buildings or structures, of any kind or description, including any portion thereof, or to make any installation therein, or to make, construct, repair, or improve any highway, road, street, sidewalk, ditch, excavation, fill, bridge, shaft, well, culvert, sewer, water system, drainage system, dredging or harbor improvement project, electric or steam rail, lighting or power system, transmission line, tower, dock, wharf, or other improvements; and
- (2) Every person engaging in the practice of architecture, professional engineering, land surveying, and landscape architecture, as defined in section 464-1.

'Federal cost-plus contractor' means a contractor having a contract with the United States or an instrumentality thereof, where, by the terms of the contract, the United States or such instrumentality agrees to reimburse the contractor for the cost of material, plant, or equipment used in the performance of the contract and for taxes which the contractor may be required to pay with respect to such material, plant, or equipment, whether the contractor's profit is computed in the form of a fixed fee or on a percentage basis; and also means a subcontractor under such a contract, who also operates on a cost-plus basis."

SECTION 4. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately numbered and to read as follows:

“Sec. 237- Exemption of producers of motion picture or television films. Persons producing motion picture or television films are exempted from taxation on, and there shall be excluded from the measure of all state taxes imposed on such persons for a period of five years from July 1, 1971:

- (1) The value of all materials imported in the State for incorporation into such production; and
- (2) The value of such production, unless sold in the State, provided film rentals, advertising revenues, gross proceeds of sales, and other receipts, derived from the business of and sales made by such persons in the State shall not be exempt and shall be included in the measure of the tax or taxes imposed on such persons.”

SECTION 5. Section 237-13, Hawaii Revised Statutes, is amended by adding a new paragraph to be designated as paragraph (9) and to read as follows:

“(9) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or his legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one percent of the gross amount received, provided that the tax levied hereunder on any amount so received and actually disbursed to another by such producer in the form of a benefit payment shall be paid by the person or persons to whom such amount is actually disbursed, and the said producer actually making any such benefit payment to another shall be entitled to claim on his return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this subsection shall not be taxable under any other subsection or section of this chapter.”

SECTION 6. Section 237-13, Hawaii Revised Statutes, is amended by renumbering the existing paragraph (9) as paragraph (10).

SECTION 7. Section 237-24, Hawaii Revised Statutes, is amended by repealing paragraph (15) and by renumbering paragraphs (16), (17), (18), (19), (20), and (21) to paragraphs (15), (16), (17), (18), (19), and (20), respectively.

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 9. If any section, clause, phrase of this Act or its application to any person or circumstance is held to be unconstitutional or invalid,

* Edited accordingly.

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the remaining portions of this Act, or the application of this Act to other persons or circumstances, shall not be affected.

SECTION 10. This act shall take effect on January 1, 1972, except for Section 4 which shall take effect on July 1, 1971.

(Approved June 21, 1971.)