

A Bill for an Act Relating to Taxation.

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

SECTION 1. Section 237-5, Hawaii Revised Statutes, is amended to read as follows:

“§237-5 “Producer” defined. “Producer” means any person engaged in the business of raising and producing agricultural, animal, poultry products in their natural state, or in producing natural resource products, or engaged in the business of fishing[,] or aquaculture, for sale, or for shipment or transportation out of the State, of the agricultural, aquaculture, animal, or poultry products in their natural or processed state, or butchered and dressed, or the natural resource products, or fish.”

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

“§237-4 “Wholesaler”, “jobber”, defined. “Wholesaler” or “jobber” applies only to a person making sales at wholesale. Only the following are sales at whole-sale:

- (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;
- (3) Sales to a licensed agricultural or aquacultural producer or agricultural or aquacultural cooperative association of materials or commodities which are to be incorporated by the producer or by the cooperative association into a finished or saleable product which is to be sold and not otherwise used by the producer or cooperative

association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of agricultural or aquacultural commodities which are sold by the producer or by the cooperative association;

- [(3)] (4) 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;
- [(4)] (5) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(9) for sale to such producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement 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(a)(9) 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)] (6) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(9) 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];
- [(6)] (7) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(9) 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)] (8) Sales of tangible personal property to a licensed person engaged in the service business[.]; provided that [(1)] (A) the property is not consumed or incidental to the performance of the services; [(2)] (B) there is a resale of the article at the retail rate of four per cent; and [(3)] (C) the resale of the article is separately charged or billed by the person

rendering the services;

- [(8)] (9) 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. The substantive provisions of this Act shall amend any other conflicting Act enacted by the regular session of 1982, but nonsubstantive amendments made by this Act shall not supersede any substantive amendments made to section 237-4, Hawaii Revised Statutes, by any other Act enacted by the regular session of 1982.

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 5. This Act shall take effect on January 1, 1983.

(Approved June 16, 1982.)