

ACT 286

S.B. NO. 2505

A Bill for an Act Relating to Sales at Wholesale to Producers.

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

SECTION 1. When the legislature amended the general excise tax law by Act 204, Session Laws of Hawaii 1971, it inadvertently omitted the phrase “of the feed lot operator’s service to a licensed producer of poultry or animals” from section 237-4(5), Hawaii Revised Statutes. Without this phrase, the affected sentence is incomplete and does not make sense. Accordingly, the purpose of this Act is to restore the correct language to section 237-4(5). The legislature finds that the amendments proposed in this Act are not intended to alter the existing words regarding “the segregated cost of the feed”. The legislature further finds that these segregated amounts still mean the retail cost of the feed charged to ranchers and other customers of feed lot operators and that the amendments made by this Act will not result in an additional tax burden or an increase in taxes on feed lot operators. There is no intention to include in the segregated amounts any costs related to feed lot services provided by feed lot operators to their customers.

This Act also includes as wholesale, sales of polypropylene shade cloth, polyfilm, and polyethylene film sold to licensed agricultural producers and cooperative associations.

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 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;
- (3) Sales to a licensed producer or 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 commodities which are sold by the producer or by the cooperative association;
- (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;
- (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) 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 the feed lot operator as part of the feed lot operator's service to a licensed producer of poultry or animals 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 shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;
- (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);
- (7) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(9) for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; 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);
- (8) Sales of tangible personal property to a licensed person engaged in the service business; provided that (A) the property is not consumed or incidental to the performance of the services; (B) there is a resale of the article at the retail rate of four per cent; and (C) the resale of the article is separately charged or billed by the person rendering the services;
- (9) Sales to a licensed leasing company of capital goods which are thereafter leased as a service to others. Capital goods means goods which have a depreciable life and which are purchased by the leasing company for lease to its customers.

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 the person's place of business a stock or lines of merchandise which the person 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. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1990.

(Approved June 25, 1990.)