# ACT 209

H.B. NO. 1684

A Bill for an Act Relating to State and Local Taxation of Mobile Telecommunications Services.

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

SECTION 1. The purpose of this Act is to enact statutory provisions to conform to the federal Mobile Telecommunications Sourcing Act, P.L. 106-252 (July 28, 2000), which takes effect on August 1, 2002. In 2000, the United States

Congress passed the Mobile Telecommunications Sourcing Act, which mandates a new method of sourcing the income received by home service providers. "Home service provider" is a term of art used to describe wireless telecommunications companies, including Verizon Wireless, AT&T Wireless, and Sprint PCS. Members of the wireless telecommunications industry and the Federation of Tax Administrators (representing the states) worked closely with Congress on these new sourcing rules. These federal sourcing rules were enacted to simplify tax reporting for home service providers. In adopting the Mobile Telecommunications Sourcing Act under Hawaii's tax laws, the representatives of the department of taxation, the wireless telecommunications industry, and other interested parties met in May of 2001. This Act is the result of those discussions.

Under most states' laws, a state may tax interstate telecommunications if the call either originates or terminates in that state and if the call is charged to a service address in that state. *Goldberg v. Sweet*, 488 U.S. 252 (1989). The *Goldberg* method, however, is not easily applied to wireless telecommunications because of the difficulty in identifying the precise location from which a call is placed or in which it terminates. For example, a wireless phone would allow a Hawaii resident driving through California to place a call to someone in Oklahoma and continue to drive into Nevada while still on the call. In this instance, the call originated in both California and Nevada and terminated in Oklahoma, but the Hawaii resident will probably be billed in Hawaii for the call. Thus, *Goldberg* is not instructive for the home service provider or the Hawaii resident (the customer) who must establish which state's taxes should apply to the call.

Under the Mobile Telecommunications Sourcing Act, all wireless calls are sourced to the subscriber's residential or primary business street address, whichever is the place of primary use. The Mobile Telecommunications Sourcing Act has developed a uniform method of sourcing wireless services for all states (and local governments within each state which constitute separate taxing jurisdictions). The wireless telecommunications industry and its customers can now determine where all calls will be taxed by simply determining the customer's place of primary use. This Act does not impose a new tax burden on the wireless telecommunications industry or its subscribers.

Under this Act, the sourcing rules will become effective on July 1, 2002, and apply to gross income received after August 1, 2002, to correspond to the effective date of the federal Mobile Telecommunications Sourcing Act.

To simplify filing and reporting for home service providers, this Act also exempts from both the general excise tax and public service company tax wholesale sales of mobile telecommunication services made between home service providers. These sales occur when a home service provider's customer places a phone call to or from an area for which the home service provider does not have a license (granted by the Federal Communication Commission) to operate. In those cases, the home service provider must purchase mobile telecommunications service from another home service provider (referred to as a "serving carrier") who does hold a license for that particular area. The income from these sales would normally be included in the gross income of a home service provider, but this Act exempts such income on a going-forward basis.

SECTION 2. Chapter 239, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . SOURCING OF MOBILE TELECOMMUNICATIONS SERVICES INCOME**

**§239-A Application.** Sections 239-A to 239-E shall apply to home service providers as defined in section 239-B.

**§239-B Definitions.** As used in sections 239-A to 239-E:

"Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in title 47 Code of Federal Regulations section 20.3 as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

"Customer" means:

(1) The person or entity that contracts with the home service provider for mobile telecommunications services; or

(2) If the end user of mobile telecommunications services is not the contracting party, "customer" means the end user of the mobile telecommunications service; provided that this paragraph shall apply only for the purpose of determining the place of primary use. Without implication for the general definition of "customer", the term does not include:

(A) A reseller of mobile telecommunications service; or

(B) A serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

"Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

"Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

"Mobile telecommunications service" means commercial mobile radio service, as defined in title 47 Code of Federal Regulations section 20.3 as in effect on June 1, 1999.

"Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

(1) The residential street address or the primary business street address of the customer; and

(2) Within the licensed service area of the home service provider.

"Prepaid telephone calling service" means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

"Reseller":

(1) Means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service; and

(2) Does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

"Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.

"Taxing jurisdiction" means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city,

county, township, parish, transportation district, or assessment jurisdiction, or other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee.

**§239-C Mobile telecommunications definitions.** The definitions relating to mobile telecommunications services set forth under section 239-B shall apply to give effect to the federal Mobile Telecommunications Sourcing Act, title 4 United State Code sections 116 to 126, and shall have no impact on the interpretation of the laws of this State except as expressly set forth in this chapter.

**§239-D Effect of customer's failure to provide its place of primary use; effect of aggregation or segregation of charges.** (a) Nothing in this chapter modifies, impairs, supersedes, or authorizes the modification, impairment, or supersession of any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.

(b) If a taxing jurisdiction does not otherwise subject charges for mobile telecommunications services to taxation and if these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable mobile telecommunications services may be subject to taxation unless the home service provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business.

(c) If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may not rely upon the nontaxability of charges for mobile telecommunications services unless the customer's home service provider separately states the charges for nontaxable mobile telecommunications services from taxable charges or the home service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identifies the nontaxable charges.

(d) A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use. Subject to a determination by the department that the customer's place of primary use does not reflect the correct taxing jurisdiction, and if the home service provider's reliance on information provided by its customer is in good faith, a home service provider may rely on the applicable residential or business street address supplied by the customer and the home service provider shall not be held liable for any additional taxes, charges, or fees that are passed on to the customer as a separate itemized charge; provided that a home service provider may treat the address used by the home service provider for tax purposes under a service contract or agreement in effect on July 28, 2002, as the customer's place of primary use for the remaining term of the contract or agreement, excluding any renewal of the contract or agreement.

**§239-E Nonseverability.** If a court of competent jurisdiction enters a final judgment on the merits that:

(1) Is based on federal law;
(2) Is no longer subject to appeal; and
(3) Substantially limits or impairs the essential elements of sections 239-A to 239-D,

then sections 239-A to 239-D are invalid and have no legal effect as of the date of entry of the judgment."

SECTION 3. Section 237-13, Hawaii Revised Statutes, is amended to read as follows:

"**§237-13 Imposition of tax.** There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

(1) Tax on manufacturers.

(A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.

(B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.

(C) If any person liable for the tax on manufacturers ships or transports the person's product, or any part thereof, out of the State, whether in a finished or unfinished condition, or sells the same for delivery to points outside the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment of the tax imposed by this paragraph. This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department shall determine the basis for assessment, as provided by this paragraph, as follows:

(i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, shall be the measure of the value of the products;

(ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of

similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining the values;

(iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make the taxpayer's returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce; and

(iv) In all cases in which products leave the State in an unfinished condition, the basis for assessment shall be adjusted so as to deduct the portion of the value as is attributable to the finishing of the goods outside the State.

(2) Tax on business of selling tangible personal property; producing.

(A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided that insofar as certain retailing is taxed by section 237-16, the tax shall be that levied by section 237-16, and in the case of a wholesaler, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business; provided that insofar as the sale of tangible personal property is a wholesale sale under section 237-4(a)(8)(B), the sale shall be subject to section 237-13.3. Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).

(B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of the Congress of the United States which may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts of Congress, there may be attributed gross proceeds of sales, the gross proceeds shall be so attributed.

(C) No manufacturer or producer, engaged in such business in the State and selling the manufacturer's or producer's products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer.

(D) When a manufacturer or producer, engaged in such business in the State, also is engaged in selling the manufacturer's or producer's products in the State at wholesale, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and the manufacturer or producer shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross proceeds of sales of the products required for the privilege of manufacturing or producing in the State. The manufacturer or producer shall pay the tax imposed in this chapter for the privilege of selling its products in the State, and the value or gross proceeds of sales of the products, thus subjected to tax, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the privilege of manufacturing or producing in the State; provided that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be required to pay the tax imposed in this chapter for the privilege of producing or selling those products.

(E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3)(C), and in that case the tax shall be computed pursuant to the election, notwithstanding this paragraph or paragraph (1) to the contrary.

(F) The department, by rule, may require that a seller take from the purchaser of tangible personal property a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(i) Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, the amount of the additional tax that is imposed upon the seller whenever the sale in fact is not at wholesale; and

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the sales of the business are exclusively at wholesale.

(3) Tax upon contractors.

(A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business; provided that insofar as the business of contracting is taxed by section 237-16, which relates to certain retailing, the tax shall be that levied by section 237-16.

(B) In computing the tax levied under this paragraph or section 237-16, there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of the tax levied under subparagraph (A) or section 237-16, on:

(i) Another taxpayer who is a contractor, as defined in section 237-6;

(ii) A specialty contractor, duly licensed by the department of commerce and consumer affairs pursuant to section 444-9, in respect of the specialty contractor's business; or

(iii) A specialty contractor who is not licensed by the department of commerce and consumer affairs pursuant to section 444-

9, but who performs contracting activities on federal military installations and nowhere else in this State;

provided that any person claiming a deduction under this paragraph shall be required to show in the person's return the name and general excise number of the person paying the tax on the amount deducted by the person.

(C) In computing the tax levied under this paragraph against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:

(i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction; and

(ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the gross proceeds of the sale, and that the taxpayer elects to have the tax on gross income computed the same as upon a sale to the state government.

(D) A person who, as a business or as a part of a business in which the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by the person (whether held as a leasehold, fee simple, or otherwise), upon the sale or other disposition of the land or improvements, even if the work was not done pursuant to a contract, shall be liable to the same tax as if engaged in the business of contracting, unless the person shows that at the time the person was engaged in making the improvements the person intended, and for the period of at least one year after completion of the building, structure, or other improvements the person continued to intend to hold and not sell or otherwise dispose of the land or improvements. The tax in respect of the improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of such building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount which would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by subparagraph (B). Upon the election of the taxpayer, this paragraph may be applied notwithstanding that the improvements were not made by the taxpayer, or were not made as a business or as a part of a business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all such gross income shall be taxable under paragraph (9); provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237-16.5, the tax shall be levied by section 237-16.5.

(4) Tax upon theaters, amusements, radio broadcasting stations, etc.

(A) Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to four per cent of the gross income of the business, and in the case of a sale of an amusement at wholesale under section 237-4(a)(13), the tax shall be subject to section 237-13.3.

(B) The department may require that the person rendering an amusement at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the amusement, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering the amusement at wholesale.

(5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by the person.

(6) Tax on service business.

(A) Upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of the business, and in the case of a wholesaler under section 237-4(a)(10), the tax shall be equal to one-half of one per cent of the gross income of the business. Notwithstanding the foregoing, a wholesaler under section 237-4(a)(10) shall be subject to section 237-13.3.

(B) The department may require that the person rendering a service at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the service, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering services at wholesale.

(C) Where any person engaging or continuing within the State in any service business or calling renders those services upon the order of or at the request of another taxpayer who is engaged in the service business and who, in fact, acts as or acts in the nature of an intermediary between the person rendering those services and

the ultimate recipient of the benefits of those services, so much of the gross income as is received by the person rendering the services shall be subjected to the tax at the rate of one-half of one per cent and all of the gross income received by the intermediary from the principal shall be subjected to a tax at the rate of four per cent. Where the taxpayer is subject to both this subparagraph and to the lowest tax rate under subparagraph (A), the taxpayer shall be taxed under this subparagraph. This subparagraph shall be repealed on January 1, 2006.

(D) Where any person is engaged in the business of selling interstate or foreign common carrier telecommunication services within and without the State, other than as a home service provider, the tax shall be imposed on that portion of gross income received by a person from service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State notwithstanding any other state law (except for the exemption under section 237-23(a)(1)) to the contrary. If, under the Constitution and laws of the United States, the entire gross income as determined under this paragraph of a business selling interstate or foreign common carrier telecommunication services cannot be included in the measure of the tax, the gross income shall be apportioned as provided in section 237-21; provided that the apportionment factor and formula shall be the same for all persons providing those services in the State.

(E) Where any person is engaged in the business of a home service provider, the tax shall be imposed on the gross income received or derived from providing interstate or foreign mobile telecommunications services to a customer with a place of primary use in this State when such services originate in one state and terminate in another state, territory, or foreign country; provided that all charges for mobile telecommunications services which are billed by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications originate, terminate, or pass through; provided further that the income from charges specifically derived from interstate or foreign mobile telecommunications services, as determined by books and records that are kept in the regular course of business by the home service provider in accordance with section 239-D, shall be apportioned under any apportionment factor or formula adopted under section 237-13(6)(D). Gross income shall not include:

(i) Gross receipts from mobile telecommunications services provided to a customer with a place of primary use outside this State;

(ii) Gross receipts from mobile telecommunications services that are subject to the tax imposed by chapter 239;

(iii) Gross receipts from mobile telecommunications services taxed under section 237-13.8; and

(iv) Gross receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer.

For the purposes of this paragraph, "charges for mobile telecommunications services", "customer", "home service provider", "mobile telecommunications services", "place of primary use",

and "serving carrier" have the same meaning as in section 239-B.

(7) Tax on insurance solicitors and agents. Upon every person engaged as a licensed solicitor, general agent, or subagent pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to .15 per cent of the commissions due to that activity.

(8) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer's 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 per cent of the gross amount received; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.

(9) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted."

SECTION 4. Section 239-2, Hawaii Revised Statutes, is amended by amending the definition of "gross income" to read as follows:

""Gross income" means the gross income from public service company business as follows:

[~~(A)~~] (1) Gross income from the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil;

[~~(B)~~] (2) Gross income from the transportation of passengers or freight, or the conveyance or transmission of telephone or telegraph messages[~~,~~] other than mobile telecommunications services, or the furnishing of facilities for the transmission of intelligence by electricity, by land or water or air:

[~~(i)~~] (A) Originating and terminating within this State;

[~~(ii)~~] (B) By means of vessels or aircraft having their home port in the State and operating between ports or airports in the State, with respect to the transportation so effected; or

[~~(iii)~~] (C) By means of plant or equipment located in the State, between points in the State; or

[~~(C)~~] (3) Gross income from the transportation of freight by motor carriers (other than as stated in [~~subparagraph (B)),~~] paragraph (2)), or the conveyance or transmission of messages or intelligence through wires or cables located or partly located in the State (other than as stated in [~~subparagraph (B)).~~] paragraph (2) or (4)); or

(4) With respect to a home service provider of mobile telecommunications services, ''gross income'' includes charges billed for mobile telecommunications services provided by a home service provider to a customer with a place of primary use in this State when the mobile telecommunications services originate and terminate within the same state; provided that all such charges for mobile telecommunications services that are billed by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through. Gross income shall not include:

(A) Any charges for or receipts from mobile telecommunications services provided to customers of the home service provider whose place of primary use is outside this State;

(B) Any receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer; and

(C) Any receipts specifically from interstate or foreign mobile telecommunications services taxable under section 237-13(6)(E), as determined by the home service provider's books and records kept in the ordinary course of business.

For the purposes of this paragraph, ''customer'', ''home service provider'', ''mobile telecommunications services'', ''place of primary use'', and ''serving carrier'' have the same meaning as in section 239-B.

The words ''gross income'' and ''gross income from public service company business'' shall not be construed to include dividends (as defined by [~~chapter 235~~)] section 235-1) paid by one member of an affiliated public service company group to another member of the same group; or gross income from the sale or transfer of materials or supplies, interest on loans, or the provision of engineering, construction, maintenance, or managerial services by one member of an affiliated public service company group to another member of the same group. ''Affiliated public service company group'' means an affiliated group of domestic corporations within the meaning of chapter 235, all of the members of which are public service companies. ''Member of an affiliated public service company group'' means a corporation (including the parent corporation) which is included within an affiliated public service company group.

Where the transportation of passengers or property is furnished through arrangements between motor carriers, and the gross income is divided between the motor carriers, any tax imposed by this chapter shall apply to each motor carrier with respect to each motor carriers' respective portion of the proceeds.

Where tourism related services are furnished through arrangements made by a travel agency or tour packager and the gross income is divided between the provider of the services on the one hand and the travel agency or tour packager on the other hand, any tax imposed by this chapter shall apply to each person with respect to each person's respective portion of the proceeds.

Accounts found to be worthless and actually charged off for income tax purposes, at corresponding periods, may be deducted from gross income as specified under this chapter so far as they reflect taxable sales, but shall be added to gross income when and if subsequently collected.

As used in this paragraph ''tourism related services'' means motor carriers of passengers regulated by the public utilities commission.''

SECTION 5. Chapter 239, Hawaii Revised Statutes, is amended by designating sections 239-1 to 239-13, Hawaii Revised Statutes, as:

**"PART I. GENERAL PROVISIONS"**

SECTION 6. Notwithstanding any provisions of this Act to the contrary, nothing in this Act shall affect or shall be construed to affect the taxation of prepaid telephone calling service under section 237-13.8, Hawaii Revised Statutes.

SECTION 7. In codifying the new sections added by section 2 of this Act and referred to in this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval; provided that sections 2, 3, and 4 of this Act with respect to tax liabilities shall apply only to charges on or revenues from customer bills issued after August 1, 2002.

(Approved June 28, 2002.)