

GENERAL EXCISE TAX LAW

HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 237
GENERAL EXCISE TAX LAW

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This is an unofficial compilation of the Hawaii Administrative Rules.

Historical Note: Chapter 237 of Title 18, Administrative Rules, is based substantially upon Regulation No. 57-1 of the Department of Taxation [Eff 6/4/57; R 2/16/82], Regulation No. 58-4 of the Department of Taxation [Eff 1/1/58; R 2/16/82], Regulation No. 59-2 of the Department of Taxation [Eff 1/1/76; R 2/16/82], Regulation No. 61-1 of the Department of Taxation [Eff 7/1/61; R 2/16/82], Regulation No. 64-3 of the Department of Taxation [Eff 7/1/67; R 2/16/82], Regulation No. 72-1 of the Department of Taxation [Eff 6/19/70; R 2/16/82], Regulation No. 74-10 of the Department of Taxation [Eff 1/1/75; R 2/16/82], Regulation No. 79-1 of the Department of Taxation [Eff 1/1/80; R 2/16/82].

Note: The rules implement the statute and may not reflect changes to the statute. For example, HAR §18-237-4-01.01 has not yet been amended to reflect Act 173, Session Laws of Hawaii (SLH) 1999, which clarified that sales to persons licensed under the general excise tax law of single-serving packets of condiments furnished to customers are subject to the .5% wholesale rate. HAR §18-237-13-02.01 has not yet been amended to reflect Act 247, SLH 1998, which provides a general excise tax exemption for the sale of tangible personal property that is imported into the State from a foreign or domestic source to a licensed taxpayer for subsequent resale at wholesale. HAR §18-237-13-03, relating to the subcontract deduction, has not yet been amended to reflect Act 169, SLH 1998, which relieved the general contractor of liability for the general excise taxes on the contract amounts paid by the general contractor to a subcontractor.

SUBCHAPTER 1

DEFINITIONS; ADMINISTRATION

HRS §237-1 **§18-237-1** **Definitions.** (a) As used in this chapter:

“Asset used in a trade or business” means tangible personal property, used in the trade or business, of a character which is or has been subject to the allowance for depreciation provided in section 167 of the Internal Revenue Code of 1954, as amended, and which is not property of a kind which is ordinarily included in the merchandise inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of a trade or business. The term shall include, but is not limited to, machinery and equipment or furniture and fixtures used in a trade or business.

“Business,” “engaging in business” includes all activities (personal, professional or corporate), engaged in or caused to be engaged in with the object of gain or economic benefit either direct or indirect, but does not include casual sales.

“Casual sale” means an occasional, isolated, irregular, infrequent or incidental sale or transaction involving tangible personal property which is not ordinarily sold in the usual course of trade or business.

- (1) Application. Section 237-13, HRS, subjects virtually every economic activity to the general excise tax. The sale of tangible personal property may be taxed either by subsection (1), (2), (10) or by section 237-16, HRS. Subsection (1) imposes a tax upon manufacturers. Subsection (2) specifically imposes a tax upon the sale of tangible personal property. Subsection (10) imposes a tax upon any person engaging in any trade, business, activity, occupation or calling not otherwise included in section 237-13, HRS. Section 237-16, HRS, imposes a tax upon all retailers. Casual sales of tangible personal property, however, are not deemed to constitute doing business or engaging in business.
 - (A) When a person engaged in trade or business sells tangible personal property which is not usually carried in his merchandise inventory and the sales thereof do not show a pattern of conduct that he sells tangible personal property other than inventory merchandise, the transaction will be deemed casual and the gross receipts derived therefrom shall not be deemed to constitute gross income.
 - (B) When a person engaged in trade or business either sells capital assets (furniture, fixtures, equipment) used in his trade or business because of (1) obsolescence; (2) replacement; (3) damage or (4) such capital assets are used as trade-ins, the transaction will be deemed casual and the proceeds derived from the sale, or the trade-in value will not be deemed to constitute taxable gross receipts.

Example 1: ABC Corporation is engaged in the retail chain-grocery business and needs new display equipment. Experience has indicated that new display equipment has a useful life of seven years. Accordingly, the taxpayer purchases the new equipment and sells

the old equipment. The foregoing sale of the old equipment is not subject to the general excise tax inasmuch as the sale is considered a “casual sale.”

Example 2: Rapid Service Laundry, in an overall plan for modernizing and renovating its existing facilities, sells most of its laundry and dry cleaning equipment and purchases new equipment as replacements. The foregoing sale of laundry and dry cleaning equipment is not subject to the general excise tax.

Example 3: Oahu Pineapple Company, engaged in the pineapple canning business, decides to discontinue its operations due to competition and major setback suffered as a result of numerous labor disputes. As a consequence, most of its pineapple processing and canning equipment are sold to other pineapple canneries. The foregoing sale of equipment is not subject to the general excise tax.

- (C) When a person engaged in a trade or business exchanges (or transfers) but does not sell, merchandise or assets used in his trade or business pursuant to a plan of partnership, incorporation, reorganization (including statutory merger or consolidation), liquidation, etc., where no gain or loss is recognized under the Internal Revenue Code, the transaction will be deemed a casual transaction such as may occur in the following situations:
- (i) Sole proprietorship to partnership. (owner becomes a partner);
 - (ii) Sole proprietorship to corporation. (IRC section 351, eighty per cent or more controlled by the individual transferor);
 - (iii) Partnership to corporation. (IRC section 351, eighty per cent or more controlled by the transferor partners);
 - (iv) Statutory mergers, consolidations, acquisitions in exchange for stock, recapitalization, and the like. (IRC sections 354, 361, and 368);
 - (v) Corporate liquidations. (IRC sections 332 to 337); or
 - (vi) Distribution or liquidations of assets of an estate or trust to beneficiaries.
- (D) When a person engaged in a trade or business sells assets which are of like nature as those carried in his merchandise inventory, the transaction will be deemed to have occurred in the usual course of business and will not be deemed a casual transaction.

Example 4: Hawaii Typewriter Company is a dealer in typewriters, adding machines and other related office machines. It accepts trade-ins of used office machines which are reconditioned by the Company and eventually sold as “used office machines.” The Company also withdraws new typewriters and adding machines from its inventory for use in its own business office. The Company capitalizes the cost of the machines and claims deductions under IRC section 167 for income tax purposes. In the ordinary course of business these office machines, which were used in its business office, are also reconditioned and sold by the Company as “used office machines.” The sale of these machines, used in the trade or business, are assets which are of like nature as that carried in the merchandise inventory of the taxpayer, and therefore is subject to the general excise tax.

Example 5: XYZ Motors, an automobile dealer, in the ordinary course of business withdraws a number of new automobiles from its inventory for use as “company cars.” XYZ Motors capitalizes the cost of these automobiles and claims depreciation thereon for income tax purposes. The “company cars” are eventually sold by XYZ Motors as used cars. The foregoing sale of “company cars” is subject to the general excise tax.

Example 6: Range Dairy Company operates a dairy farm having approximately 500 milking cows. The Company capitalizes the cost of the milking cows and claims deductions under IRC section 167 for income tax purposes. In addition to its regular sales, the Company sells the milking cows whenever they have served their useful purpose. The sale of the milking cows is subject to the general excise tax.

- (E) Where a person engaged in a trade or business sells tangible property which is not usually carried in his merchandise inventory, but by reason of the frequency, number and size, the sales thereof show a pattern of conduct that he sells tangible property

other than inventory merchandise, the transaction will be deemed to be in the usual course of business and not a casual transaction.

Example 7: Rentals Incorporated is engaged in the automobile rental and leasing activity. Every three years or thereabouts, taxpayer makes way for new rental automobiles by selling the old rental automobiles. The sale of the old rental automobiles is subject to the general excise tax. Although the taxpayer is not engaged primarily in the business of selling rental automobiles, there are a sufficient number of recurring sales as to constitute engaging in the business of selling automobiles. Thus, such sales are not considered “casual sales.”

Example 8: Playtime Company derives part of its income from various amusement and vending machines — pinball, cigarette, candy and related machines — located in stores and amusement parlors. Playtime Company has agreements with the foregoing stores and amusement parlors to the effect that receipts from the machines would be divided on a certain percentage. To attract new customers and remain in the market competitively, Playtime acquires new pinball machines every six months and sells the used pinball machines. The sale of those pinball machines is subject to the general excise tax.

(F) Where a person engaged in trade or business sells his merchandise inventory in bulk, other than in the ordinary course of his trade or business, or where the sale in bulk occurs upon the termination of a business activity which is one of several activities conducted by the business, the transaction will be deemed to have occurred in the usual course of the taxpayer’s business and will not be deemed to constitute a casual sale.

Example 9: Subsequent to losing its lease, ABC Drug Store decides to terminate its business. Accordingly, the entire merchandise inventory is sold in bulk to another drug store. The foregoing sale of merchandise inventory is subject to the general excise tax.

Example 10: S & S Bicycle Shop is engaged in the business of selling and servicing bicycles. Due to lack of store space and decline in sales, the taxpayer decides to terminate the “sales” and concentrate on the service activity of the business. The inventory of bicycles is sold in bulk to a large department store. The foregoing sale of merchandise inventory is subject to the general excise tax. [Eff 2/16/82] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-1)

HRS §237-2 **§18-237-2** (Reserved)

HRS §237-3 **§18-237-3** **“Gross income”, “gross proceeds of sale”, defined.** (a) See Administrative Rule §18-237-13(c)(1) for the exemption from the general excise tax of all rents received on account of the lease or rental of dwelling units developed and constructed pursuant to §§359G-6 and 359G-11, HRS. [Eff 2/16/82] (Auth: HRS §§231-3(9), 237-8, 359G-15) (Imp: HRS §§237-3, 359G-15)

HRS §237-4 **§18-237-4** **“Wholesaler”, “jobber”, defined.** (a) Sales at wholesale defined. Pursuant to section 237-4, HRS, and taking into consideration sections 237-13(3)(C) and 237-13(3)(D), HRS, 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 materials or commodities which are to be incorporated by such 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 such 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, used, or applied by the producer or by the cooperative association for the purpose of producing or raising a finished or saleable product or crop which is to be sold and not otherwise used by

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

- (4) Sales to a licensed contractor of materials 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 the finished work or project in a form which is perceptible to the senses, unless governed by the election provided for by section 237-13(3)(C), HRS; and sales to a purchaser holding a license under the general excise tax law, of materials or commodities which are to be incorporated by the purchaser into a building, structure or other improvements on land held by the purchaser and which will remain in such improvement in a form which is perceptible to the senses, provided that the improvements are made with the intention of selling or otherwise disposing of them and that the property is afterward sold or otherwise disposed of in such manner as to render the purchaser of the materials or commodities, so incorporated, liable to the same tax as if engaged in the business of contracting;
- (5) Sales to a licensed producer, or to a cooperative association described in section 237-23(9), HRS, for sale to such producer, or to a licensed person operating a feed lot, of:
 - (A) 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, HRS, 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;
 - (B) In the case of a feed lot operator:
 - (i) Only the segregated cost of the feed furnished by the feed lot operator as part of his services to a licensed producer of poultry or animals to be butchered, or to a cooperative association described in section 237-23(1), HRS, of such licensed producers shall be deemed to be a sale at wholesale; and
 - (ii) 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.
 - (C) 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(9), HRS, for sale to such producer, of:
 - (A) Seed for producing agricultural products to be sold or otherwise disposed of as described in section 237-5, HRS, or to be incorporated in a manufactured product as described in paragraph (2); or
 - (B) Bait for catching fish (including the catching of bait for catching fish) which are to be sold or otherwise disposed of as described in section 237-5, HRS, 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(9), HRS, for sale to the producer, of:
 - (A) Cartons and other containers, wrappers and sacks, and binders to be used for packaging eggs, vegetables, fruits and other agricultural products; or
 - (B) Seedlings and cuttings for producing nursery plants; or
 - (C) Chick containers; which are to be used as described in section 237-5, HRS, 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 service; and
 - (B) There is a sale 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 service; and
- (9) Sales to a licensed leasing company which leases capital goods as a service to others. For this purpose, capital goods are goods which in the hands of a licensed leasing company has a depreciable life and which are to be used by the licensed leasing company for leasing to others for a consideration.

The words “cooperative association” as used in paragraphs (5) to (7) mean a cooperative association incorporated under chapter 421 or under chapter 422, HRS, and which fully meet the requirements for tax exemption as specified in section 237-23(9), HRS.

The words “agricultural producer” as used in paragraph (3) and section 237-5, HRS, mean a producer of plant crops, including floriculture, horticulture, viticulture (vineyards), timber, nut, coffee, sugar cane, pineapple, or other similar agricultural activity where the products or crops are sold, but shall not include any animal or poultry products or a person operating a golf course, a cemetery, a property management activity, or an agricultural research organization.

The words “aquaculture producer” as used in paragraph (3) and section 237-5, HRS, mean a producer of aquatic plant and animal life for food or fiber within a controlled salt, brackish, or freshwater environment.

(b) Subsection (c) and (d) relate to the tax rates applicable under the general excise tax law with respect to containers and packaging materials sold in the State.

(c) Nonreturnable containers, packaging materials.

(1) Sale to manufacturer for incorporation during preparation for market.

(A) This paragraph applies to nonreturnable containers and packaging materials which are sold to a licensed manufacturer who incorporates the container or packaging material into a finished or saleable product during the course of its preservation, manufacturing, processing, or preparation for market, and which will remain in a form which is perceptible to the senses, which is to be sold and not otherwise used by the manufacturer.

(B) When containers and packaging materials to which this subparagraph applies are sold to a person and for the purpose above stated, they take the rate of:

(i) One-half of one per cent if sold by the manufacturer of the container or packaging material; or

(ii) One-half of one per cent if sold by a wholesaler.

Example 1: Taxpayer manufactures cracker boxes, which taxpayer supplies to a cracker manufacturer. The boxes are used for packaging crackers, which are displayed and sold in packaged form. The rate applicable to the manufacture and sale of the boxes by the box manufacturer is one-half of one per cent.

Example 2: Taxpayer imports from the mainland cardboard cartons which are sold to a brewery. The brewery takes the cartons to a printer who imprints the brewery’s name and trade mark together with information as to the contents. The cartons are used by the brewery in putting cans of beer in case lots. This is done at the time of manufacture, and the beer is offered for sale by the case. The rate applicable to the taxpayer upon the sale of the cartons to the brewery is one-half of one per cent.

(2) Special charge for container. Nonreturnable containers and packaging materials take a rate of one-half of one per cent when sold to a licensed retailer or other licensed seller, who adds a special charge on account of the type of container or packaging materials used for his merchandise, for example, a special charge for a gift box.

(3) Four per cent rate, when applicable. All sales to unlicensed persons, and all other sales of containers and packaging materials that are not shown to be covered by the one-half of one per cent rate as set forth in subparagraphs (A) or (B) shall be deemed to be sales taking the four per cent rate. The fact that the purchaser is engaged in making sales and uses the purchased containers or packaging materials for the purpose of delivering the goods sold or otherwise completing sales transactions shall not cause a lesser rate to apply.

Example 3: Taxpayer imports from the mainland boxes and wrapping paper, which are used by retail stores at the time of sale of their merchandise to box or wrap purchases made by customers. The four per cent rate applies to the sale of the boxes and wrapping paper to the retail stores.

(d) Returnable containers.

(1) Sales of containers to licensed persons whose customers receive title to the containers shall take the one-half of one per cent rate when the instance would be covered by subsection (c)(1) or (2), except for the fact that the containers are returnable by these customers. The

circumstance that the customers may return the containers and receive a credit or refund for doing so does not necessarily show that title does not pass to the customers.

- (2) However, in some instances involving returnable containers title to the containers does not pass to the customers of the purchaser and accordingly the containers are not “resold” by the purchaser; in such cases the sale of the containers to the purchaser so using them takes the four per cent rate. For example, the name of the purchaser may appear on the containers in such a way as to show that there is no intention on his part to pass title to the containers, and accordingly the containers are not “resold” by the purchaser and the sale of the containers to this purchaser takes the four per cent rate.

Whether paragraph (1) or (2) applies depends upon all the facts, which shall be submitted for ruling.

(e) Agricultural or aquacultural materials or commodities sold in the State. This subsection relates to the tax rates applicable under the general excise tax law with respect to agricultural and aquacultural materials or commodities sold in the State.

- (1) This paragraph applies to the sale of materials or commodities incorporated, used, or applied as essential to the planting, growth, nurturing, and production of agricultural or aquacultural commodities to a licensed agricultural or aquacultural producer or cooperative association for use by the person in the production, processing, and preparation of agricultural or aquacultural products or crops for sale.
- (A) Some examples of sales of materials or commodities representing qualifying uses include, but are not limited to: antibiotics (for aquaculture and not for cattle and animals), expendable drip irrigation tubings, fertilizers, fumigants, fungicides, growth regulators, herbicides, packaging supplies, polyethylene mulch films, pesticides, processing materials, roofing papers (used in field furrows), soil amendments, surfactants (wetting agents), water purchased for irrigation (from nonpublic utility companies). Pesticides shall be defined by section 149A-2(26), HRS.
- (B) Some examples of sales of materials or commodities representing nonqualifying uses include, but are not limited to: construction materials and supplies, equipment and repair parts, filtering devices, harvesting equipment, irrigation systems, janitorial supplies, office supplies, odor control devices and materials, PVC pipes, all rendition of services.
- (C) When materials or commodities to which this paragraph applies are sold to a person and for the purposes above stated, such sale takes the rate of:
- (i) One-half of one percent, if sold for qualifying purposes, or
- (ii) Four per cent, if sold for nonqualifying purposes.
- (2) In the event materials or commodities are both qualifying and nonqualifying uses, an allocation shall be made in order that only the sales made for qualifying uses will be reported at the rate of one-half of one per cent as provided in paragraph (1)(C)(i). The materials or commodities sold for nonqualifying uses shall be reported at the rate of four per cent as provided in paragraph (1)(C)(ii).

Example 1: Taxpayer sells materials and commodities to a licensed aquacultural producer engaged in research activities in addition to taxpayer’s usual business of producing aquacultural products for market. The materials or commodities used in the research activities represent nonqualifying uses; therefore, the applicable rate imposed upon the sale of such materials and commodities is four per cent.

Example 2: Taxpayer sells certain materials and commodities to a licensed agricultural producer, including a soil amendment in order to obtain optimum crop production. It is found, however, that the soil amendment releases certain offensive odors creating a serious pollution problem for the nearby community. To combat this situation, the agricultural producer adds odor controlling materials to the soil amendment which do not adversely affect crop production. Inasmuch as the soil amendment is deemed essential to the production of agricultural commodities, the applicable rate of such sale is one-half of one per cent. The applicable rate to the sale of the odor controlling materials is four per cent since they are not considered essential to the production of agricultural commodities.

Example 3: After harvesting, a sugar plantation treats the soil with a substance which controls odors and which also acts as a fungicide. Without this fungicide treatment,

subsequent yields would be adversely affected. In this situation, the applicable tax rate on the sale of the odor controlling fungicide to the plantation is one-half of one per cent because of its dual use as a fungicide.

Example 4: A landscape contractor maintains its own nursery. The plants grown in the nursery are used in contracting activities or may be sold apart from any landscaping contract. The contractor also provides grounds maintenance services for various clients. The applicable tax rate on sales to this contractor of fertilizers and pesticides for nursery use is one-half of one per cent. However, the applicable tax rate on sales of these same products for use in maintenance services is four per cent.

- (3) A seller may obtain a resale certificate from the buyer. For purposes of resale certificates, section 18-237-13(b)(4) applies. [Eff 2/16/82; am 4/25/83] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §§237-4, 237-5)

HRS §237-4(11) & (12)

§18-237-4-01.01 Sales to eating or drinking retailers. (a) As used in this section:

“Critical element” means any nonreturnable food or beverage container which is necessary to contain food or beverage for delivery by an eating or drinking retailer.

“Delivery” means the transfer of food or beverage by an eating or drinking retailer to a purchaser for take-out purchases, home transfer, transfer within a traditional service and fast-food restaurant, or any combination thereof.

“Eating or drinking retailer” means a licensed retailer engaged in the temporary or permanent activity of selling food or beverage at retail. Eating or drinking retailer includes traditional service and fast-food restaurants, carnivals, fairs, hot dog carts, lunch wagons, grocery or department stores engaging in the sale of ready-to-eat foods, bakeries, concession stands, or the like.

“Nonreturnable food or beverage container” means any container, wrapper, or packaging, including any attached or unattached lid or cover which is (1) usually discarded after its initial use, and (2) whose generally known and most common use is to contain food or beverage for delivery.

(b) If any tangible personal property is resold by an eating or drinking retailer for a separate charge, then section 18-237-4(a)(1) shall control the determination of the tax rate.

(c) Sales to an eating or drinking retailer of any tangible personal property which is a critical element and which is used to contain food or beverage sold at retail shall be taxable as sales at wholesale.

Example 1: Taxpayer sells cardboard pizza boxes to a pizza restaurant. The pizza restaurant prepares and serves pizza to restaurant customers and also prepares pizza for take-out customers.

The pizza box is a critical element. The pizza box is a nonreturnable food container; it is a container which is usually discarded after its initial use and whose generally known and most common use is to contain pizza for delivery. The pizza box also is necessary to contain the pizza for delivery by the restaurant.

Lastly, the pizza box is used to contain the pizza sold at retail. Sales of the pizza boxes, therefore, are taxable as sales at wholesale.

Example 2: Taxpayer sells white paper boxes and styrofoam containers to a Chinese restaurant. The restaurant prepares and serves food to restaurant customers and also prepares food for take-out customers.

White paper boxes and styrofoam containers are critical elements. Both white paper boxes and styrofoam containers are nonreturnable food containers; they are containers which are usually discarded after their initial use and whose generally known and most common uses are to contain food for delivery. White paper boxes and styrofoam containers also are necessary to contain the food for delivery by the restaurant.

Lastly, the white paper boxes and styrofoam containers are used to contain the food sold at retail. Sales of the white paper boxes and styrofoam containers, therefore, are taxable as sales at wholesale.

Example 3: Taxpayer sells cups and cup lids to a lemonade stand. Cups and cup lids are critical elements. Cups and cup lids form nonreturnable beverage containers; cups and cup lids form containers which are usually discarded after their initial use and whose generally known and most common uses are to contain beverages for delivery. Cups and cup lids also are necessary to

contain beverages for delivery by the lemonade stand.

Lastly, the cups and cup lids are used to contain the lemonade sold at retail. Sales of the cups and cup lids, therefore, are taxable at wholesale.

Example 4: Taxpayer sells paper wrappers to a lunch wagon operator. The lunch wagon operator prepares hot dogs and sandwiches for sale; they are wrapped in the paper wrappers for delivery of the food to the purchasers.

Paper wrappers are critical elements. Paper wrappers are nonreturnable food containers; they are wrappers which are usually discarded after their initial use and whose generally known and most common uses are to contain food for delivery. Paper wrappers also are necessary to contain the hot dogs and sandwiches for delivery by the lunch wagon operator.

Lastly, the paper wrappers are used to contain the hot dogs and sandwiches sold at retail. Sales of the wrappers, therefore, are taxable as sales at wholesale.

Example 5: Taxpayer sells plastic wrap, butcher paper, and foam packing trays to a meat market. The market packages meat in the plastic wrap, butcher paper, and foam packing trays for sale in the market.

Plastic wrap, butcher paper, and foam packing trays are critical elements. Plastic wrap, butcher paper, and foam packing trays are nonreturnable food containers; they are packaging materials and containers which are usually discarded after their initial use and their generally known and most common uses are to contain food for delivery. Plastic wrap, butcher paper, and foam packing trays also are necessary to contain the meat for delivery by the meat market.

Lastly, the plastic wrap, butcher paper, and foam packing trays are used to contain the meat sold at retail. Sales of the plastic wrap, butcher paper, and foam packing trays, therefore, are taxable as sales at wholesale.

Example 6: Taxpayer sells foil-lined bags to a full-service restaurant. The restaurant allows customers to take home the leftovers from their restaurant meal; leftovers are packed in a foil-lined bag.

The foil-lined bags are critical elements. The foil-lined bags are nonreturnable food containers; they are packages which are usually discarded after their initial use and whose generally known and most common uses are to contain food for delivery. The foil-lined bags also are necessary to contain the food for delivery by the restaurant.

Lastly, the foil-lined bags are used to contain the food sold at retail. Sales of the foil-lined bags, therefore, are taxable as sales at wholesale.

Example 7: Taxpayer sells foil-lined hot dog bags and waxed paper-lined popcorn bags. Hot dogs are cooked and then placed in the hot dog bags for sale at the theater. The theater also pops popcorn; the theater then packages the popcorn into individual portions in the waxed paper-lined popcorn bags.

Foil-lined hot dog bags and waxed paper-lined popcorn bags are critical elements. Foil-lined hot dog bags and waxed paper-lined popcorn bags are nonreturnable food containers; they are packages which are usually discarded after their initial use and whose generally known and most common uses are to contain food for delivery. Foil-lined hot dog bags and waxed paper-lined popcorn bags also are necessary to contain hot dogs and popcorn for delivery by the theater.

Lastly, the foil-lined and waxed paper-lined bags are used to contain the hot dogs and popcorn sold at retail. Sales of the foil-lined hot dog bags and waxed paper-lined popcorn bags, therefore, are taxable as sales at wholesale.

(d) The tax rate on the sale of any tangible personal property which is not a critical element or which is not used to contain food or beverage sold at retail shall be determined under section 237-4, HRS, and section 18-237-4.

Example 1: Taxpayer sells paper bags to a carnival. The carnival packages malasadas for sale in paper bags.

These paper bags are not critical elements. As defined in this section, a paper bag is not a nonreturnable food or beverage container; although a paper bag is usually discarded after its initial use, the generally known and most common use of a paper bag is not to contain food or beverage.

Rather, the generally known and most common use of a paper bag is to aid the carrying of many items.

Consequently, although the paper bags are used by the carnival to contain malasadas sold at retail, the paper bags are not critical elements as defined in this section. The sale of the paper bags, therefore, is taxed at retail as determined under section 237-4, HRS, and section 18-237-4.

Example 2: Taxpayer sells plastic drinking cups to a supermarket which sells groceries and ready-to-eat foods. The supermarket sells some of the cups at retail; the other cups are used to contain beverages sold at a snack bar located in the supermarket.

The cups sold to the snack bar located in the supermarket are critical elements. The cups sold to the snack bar are nonreturnable beverage containers; these cups are containers which are usually discarded after their initial use and whose generally known and most common uses are to contain beverages for delivery. These cups also are necessary to contain beverages for delivery by the supermarket. Lastly, the cups are used to contain the beverages sold at retail. Sales of cups used to contain beverages sold by the snack bar, therefore, are taxable as sales at wholesale.

The rest of the cups sold to the supermarket also are critical elements but are not used to contain beverages for sale at retail. The sale of cups to the supermarket for resale, therefore, is taxed at wholesale as determined under section 237-4, HRS, and section 18-237-4.

Example 3: Taxpayer sells napkins, spoons, and paper ice cream cups to an ice cream parlor. Napkins are wrapped around ice cream cones and also are provided for sanitary use by purchasers.

Napkins and spoons are not critical elements. As defined in this section, napkins and spoons are not nonreturnable food containers; although napkins and spoons are usually discarded after their initial use, the generally known and most common uses of napkins and spoons are not to contain food. Rather, the generally known and most common use of a napkin is for sanitary purposes, and the generally known and most common use of a spoon is to aid consumption. Consequently, because the napkins and spoons are not nonreturnable food or beverage containers, they are not critical elements as defined in this section. The sale of napkins and spoons to the ice cream parlor, therefore, is taxed at retail as determined under section 237-4, HRS, and section 18-237-4.

The paper ice cream cups, however, are critical elements. The paper ice cream cups are nonreturnable food containers; they are containers which are usually discarded after their initial use and whose generally known and most common uses are to contain ice cream for delivery. The paper ice cream cups also are necessary to contain the ice cream for delivery by the ice cream parlor. Lastly, the paper ice cream cups are used to contain ice cream sold at retail. Sales of the paper ice cream cups, therefore, are taxable as sales at wholesale.

Example 4: Taxpayer sells white paper boxes and butcher paper to a carnival whose activities include engaging in the sale of food and beverage at retail. Instead of using the boxes and butcher paper to contain food for delivery, the carnival uses the butcher paper to decorate its game and scrip booths and the boxes to contain t-shirts sold at retail.

Even though the boxes and butcher paper are critical elements (i.e., the boxes and butcher paper are nonreturnable food containers and packaging; they are containers and packaging which are usually discarded after their initial use and whose generally known and most common uses are to contain food for delivery; and the boxes and butcher paper also are necessary to contain food for delivery by an eating or drinking retailer), they are not used to contain food for sale at retail. Rather, the boxes and butcher paper are used as decorations and gift wrapping for the carnival. The sales of the white paper boxes and butcher paper to the carnival, therefore, are taxed at retail as determined under section 237-4, HRS, and section 18-237-4.

Example 5: Taxpayer sells 10,000 promotional plastic cups and cup lids to a snack bar and deli located in the XYZ Store, which is a clothing and general merchandise retailer. The snack bar and deli use 1,000 of the promotional cups and cup lids to serve beverages. The other 9,000 cups and cup lids, however, are used by the XYZ Store as gift wrapping for the “XYZ Store” promotional t-shirts. “XYZ Store” t-shirts are sold gift wrapped in the cups and cup lids.

The 1,000 cups and cup lids used to contain beverages are critical elements. Cups and cup lids form nonreturnable beverage containers; they are containers which are usually discarded after their initial use and whose generally known and most common uses are to contain beverages for

delivery. The cups and cup lids also are necessary to contain beverages for delivery by the XYZ Store. Lastly, the cups and cup lids are used to contain beverages sold at retail. Sale of the 1,000 cups and cup lids to contain the beverages sold by the snack bar and deli, therefore, is taxable as a sale at wholesale.

The other 9,000 cups and cup lids also are critical elements but are not used to contain beverages for sale at retail by XYZ Store. Rather, the cups and cup lids are used as gift wrapping. The sale of the 9,000 cups and cup lids which are used as gift wrapping, therefore, are taxed at retail as determined under section 237-4, HRS, and section 18-237-4.

- (e) Except as provided in this section, the tax rate on the sale of food or beverage to an eating or drinking retailer shall be determined under section 237-4, HRS, and section 18-237-4.
- (f) Sales of food or beverage to an eating or drinking retailer which cooks, combines, or prepares the food or beverage for sale at retail shall be taxable as sales at wholesale.

Example: Taxpayer sells uncooked hamburger patties and buns to a hamburger stand. The hamburger stand cooks and prepares hamburgers for sale at retail. Sales of the hamburger patties and buns to the hamburger stand, therefore, are taxable as sales at wholesale.

- (1) Sales of bulk containers of condiments to an eating or drinking retailer which cooks, combines, or prepares the bulk condiments for sale at retail shall be taxable as sales at wholesale.

Example: Taxpayer sells bulk containers of ketchup, mustard, salad dressing, and tartar sauce to an eating or drinking retailer.

The eating or drinking retailer uses these condiments in the cooking, combination, or preparation of food for sale at retail. Sales of these bulk containers of condiments to the eating or drinking retailer, therefore, are taxable as sales at wholesale.

- (2) Sales of prepackaged single-serving packets of condiments to an eating or drinking retailer which prepares food or beverage for sale at retail shall be taxable as sales at retail; provided that if any prepackaged, single-serving condiment packets are resold by an eating or drinking retailer for a separate charge, then section 18-237-4(a)(1) shall control the determination of the tax rate.

Prepackaged single-serving condiment packets include salt, pepper, ketchup, mustard, relish, croutons, bacon bits, sugar, sugar substitutes, cream, cream substitutes, shoyu, spices, salad dressings, sauces, pancake syrup, butter, butter substitutes, or the like.

Example: Taxpayer sells lettuce, other vegetables, and prepackaged single-serving condiment packets of croutons and salad dressings to a grocery store. The grocery store prepares the lettuce and other vegetables into salads for sale at retail to purchasers. There is no separate charge for the prepackaged single-serving condiment packets of croutons and salad dressings which accompany the salads.

Sales of lettuce and other vegetables to the grocery store are taxable as sales at wholesale; the grocery store combines these items into salads for sale at retail to purchasers. Conversely, sales of the prepackaged single-serving condiment packets of croutons and salad dressings to the grocery store are taxable as sales at retail; there is no separate charge for the condiment packets. [Eff 12/30/93] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-4)

§18-237-5 to §18-237-8

(Reserved)

HRS §237-8.6 §18-237-8.6-01 Definitions. Where used in sections 18-237- 8.6-01 to 18-237-8.6-10, unless the context otherwise requires:

“Amusements” means 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.

“Business” means the same as the term is defined in chapter 237, HRS.

“Contracting” means the same as the term is defined in chapter 237, HRS.

“Contractor” means the same as the term is defined in chapter 237, HRS.

“Control” means to exercise restraining or directing influence over.

“Documented” means recorded, by means of letters, figures, or marks, the original, official, or legal form of something, which is admissible as an evidence in a court of law.

“Gross income” means the same as the term is defined in chapter 237, HRS.

“Gross proceeds of sale” means the same as the term is defined in chapter 237, HRS.

“Hawaii district” means the taxation district for the county of Hawaii.

“Home office” means the principal place of business in this State from which the trade or business of the taxpayer is directed or managed.

“Intangible property” means, but is not limited to, franchises, patent, copyright, formula, process, design, pattern, know how, format, or other similar items.

“Job site” means the place where a structure or group of structures was, is, or is to be located. It is a location of a property or a plot of land prepared for or underlying a structure or development.

“Kauai district” means the taxation district for the county of Kauai.

“Maui district” means the taxation district for the counties of Maui and Kalawao, which includes the islands of Maui, Molokai, and Lanai.

“Nexus” means, but is not limited to, physical presence in the State or the taxation district as the context may require.

“Oahu district” means the taxation district for the city and county of Honolulu.

“Physical presence” means the presence of one or more employees, representatives, property, or closely-related subsidiaries.

“Place of business” means a physical location in this State at which the trade or business of the taxpayer is conducted. This term does not include a transient or insubstantial location or facilities, such as hotel rooms, dropboxes, telephone number listings, or telephone answering services.

“Profit centers” are measurement tools used by many different industries. They are a means by which management of a company can analyze revenues and related expenses generated by a profit unit. A profit unit can be a product, a line of business or a person.

“Real property” means the same as the term is defined in chapter 231-1, HRS.

“Reasonable allocation method” is a method used to distribute or apportion gross income or gross proceeds in a clear, fair and proper manner and properly reflects the gross income to each taxation district, such as based on the amount of time spent.

“Service business” means the same as the term is defined in chapter 237, HRS.

“Tangible personal property” is generally property, which may be touched or felt.

“Taxation district” means the Kauai district, Hawaii district, Maui district, or Oahu district, as those districts are defined in this section.

“Taxpayer” means any person liable for tax under chapter 237, HRS. [Eff 12/07/2006] (Auth: HRS §§231-3(9), 237- 8) (Imp: HRS §237-8.6)

HRS §237-8.6 §18-237-8.6-02 Allocation of gross income and gross proceeds from sales of tangible personal property. Except as provided in this section, the gross income and gross proceeds of sale derived from a taxpayer’s sale of tangible personal property, shall be allocated to the taxation district to which the property is delivered, regardless of where the title to the property passes. The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds for sales of tangible personal property shipped or delivered to the Oahu district provided the taxpayer has substantial nexus with the Oahu district. Substantial nexus is created by, but is not limited to physical presence, such as the presence of one or more employees, representatives, or property, in the Oahu district for purposes of the county surcharge under section 237-8.6, HRS.

Example 1: Taxpayer, a retailer located in the Oahu district, receives an order for products from Purchaser. Taxpayer accepts the order and delivers the products to the Maui district. Taxpayer shall allocate the gross income from these sales to the Maui district, where the products were delivered. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the surcharge is levied on gross income from products delivered in the Oahu district and the destination of the shipment is outside of the Oahu district.

Example 2: Taxpayer, a retailer located in the Maui district with an office or store in the Oahu district, delivers products to Purchaser in the Oahu district. Taxpayer shall allocate the gross income or gross proceeds from these sales to the Oahu district, where the products were delivered. Taxpayer shall be subject to the 0.5 per cent county surcharge because substantial nexus with the Oahu district is established through its office or store in the Oahu district.

Example 3: Taxpayer, a retailer located in the Maui district, sells products to Purchaser located in the Oahu district. Pursuant to Purchaser's instructions, Taxpayer directs Taxpayer's product manufacturer, who is located in the Kauai district, to deliver the products to Purchaser's office or project in the Maui district. Taxpayer shall allocate the gross income or gross proceeds from these sales to the Maui district, where the products were delivered. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the surcharge is levied on gross income arising from the sale of tangible personal property delivered in the Oahu district.

Example 4: Company XYZ, located in the Maui district, does not have an office, store, or other representation in the Oahu district, delivers products to Customer ABC, who maintains a central warehouse in the Oahu district. Subsequently, Customer ABC delivers the products to its branch stores located in other taxation districts. Company XYZ shall allocate the gross income or gross proceeds from these sales to the Oahu district, where the products were delivered. Company XYZ shall not be subject to the 0.5 per cent county surcharge because Company XYZ does not have an office, store, or other representation in the Oahu district, thus substantial nexus with the Oahu district is not established.

Example 5: Retailer located out-of-state has a sales agent in the Oahu district, sells and delivers products to Purchaser in the Oahu district. Retailer shall be subject to the general excise tax for the sales in the Oahu district because substantial nexus with the State is established through its sales agent in the Oahu district. Retailer shall also be subject to the 0.5 per cent county surcharge because substantial nexus with the Oahu district is established through its sales agent in the Oahu district.

Example 6: Same facts as in example 5, except that Retailer does not have an office, employees or other representation, including any sales person, in the Oahu district. Retailer shall not be subject to the general excise tax for the sales in the Oahu district because Retailer does not have an office, store, or other representation in the Oahu district, thus there is no substantial nexus with the State. Retailer shall not be subject to the 0.5 per cent county surcharge either because Retailer does not have an office, store, or other representation in the Oahu district, thus substantial nexus with the Oahu district is not established. [Eff 12/07/2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

HRS §237-8.6 §18-237-8.6-03 Allocation of gross income received by service businesses. Gross income received by a taxpayer engaged in a service business shall be allocated to the taxation district in which the services are intended to be used or consumed. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly, and properly reflects the gross income to the appropriate taxation district; provided that the allocation method is documented. The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds for services intended to be used or consumed in the Oahu district provided the taxpayer has substantial nexus with the Oahu district.

Example 1: Taxpayer, an attorney whose home office is in the Oahu district, is retained by a client in the Maui district to prepare a lease for land in the Kauai district. Taxpayer shall allocate the income to the Kauai district, where the services are intended to be consumed. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the services are intended to be consumed outside the Oahu district.

Example 2: Taxpayer is an accounting firm. Taxpayer has a home office in the Oahu district, which constitutes substantial nexus with the Oahu district. Taxpayer's employees travel to other taxation districts to conduct audits of clients. Taxpayer shall allocate income to the taxation districts, where the services are intended to be consumed by the clients. Taxpayer shall be subject to the 0.5 per cent county surcharge for services intended to be consumed in the Oahu district.

Example 3: Taxpayer provides dentistry services from places of business in all of the taxation districts. Taxpayer has a home office in the Maui district. Taxpayer travels to the Oahu district to provide dentistry services. Taxpayer shall allocate the gross income to the taxation districts where the services are intended to be used or consumed. In this case, substantial nexus is established by Taxpayer's physical presence in the Oahu district. Taxpayer shall be subject to the

0.5 per cent county surcharge for services intended to be used or consumed in the Oahu district but shall not be subject to the 0.5 per cent county surcharge for services intended to be consumed in taxation districts other than the Oahu district.

Example 4: Taxpayer is a law firm comprised of sixty-five attorneys. Sixty attorneys work in Taxpayer's home office in the Oahu district and five work in Taxpayer's place of business located in the Hawaii district. Taxpayer is retained by a client in the Hawaii district for a court case in the Hawaii district. Taxpayer shall allocate gross income from services performed by the attorneys to the Hawaii district where Taxpayer's services are intended to be used or consumed, notwithstanding incidental travel, meetings, or court appearances, outside of the taxation district, or receipt of support services from the place of business located outside of the taxation district. Taxpayer shall not be subject to the 0.5 per cent county surcharge regardless of the substantial nexus with the Oahu district because the legal services are intended to be used or consumed in the Hawaii district. [Eff 12/07/2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

HRS §237-8.6 §18-237-8.6-04 Allocation of gross income from commissions. Commission income received by a taxpayer shall be allocated to the taxation district in which the services are rendered by the taxpayer except for commissions earned from real estate sales, or leasing, or from financing transactions secured by real estate. The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds from commissions when the services are rendered by the taxpayer in the Oahu district. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly, and properly reflects the gross income to the appropriate taxation district; provided that the allocation method is documented. In the case of commissions earned from real estate sales or from financing transactions secured by real estate, commission income received by a taxpayer shall be allocated to the taxation district in which the real property is located. The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds from commissions earned from real estate sales, or leasing, or from financing transactions secured by real estate where the real property is located in the Oahu district.

Example 1: Taxpayer has an office located in the Oahu district, which sells a travel package for Disney World, Florida under section 237-18(f) to Purchaser located in the Oahu district. Taxpayer shall allocate the commission income to the Oahu district, where the services of selling the travel package for Disney World, Florida are rendered by Taxpayer. Taxpayer shall be subject to the 0.5 per cent county surcharge because such services are rendered in the Oahu district.

Example 2: Same facts as in example 1, except that Purchaser is located in the Maui district. Taxpayer shall allocate the commission income to the Oahu district, where the services of selling the travel package for Disney World, Florida are rendered by Taxpayer. Taxpayer shall be subject to the 0.5 per cent county surcharge because such services are rendered in the Oahu district.

Example 3: Same facts as in example 1, except that Taxpayer is located in the Maui district. Taxpayer shall allocate the commission income to the Maui district, where the services of selling the travel package for Disney World, Florida are rendered by Taxpayer. Taxpayer shall not be subject to the 0.5 per cent county surcharge because such services are rendered outside of the Oahu district.

Example 4: Same facts as in example 1, except that Taxpayer is located in the Maui district and Purchaser is located in the Hawaii district. Taxpayer shall allocate the commission income to the Maui district, where the services of selling the travel package for Disney World, Florida are rendered by Taxpayer. Taxpayer shall not be subject to the 0.5 per cent county surcharge because such services are rendered outside of the Oahu district.

Example 5: Taxpayer is a securities broker that has an office in the Oahu district, sells securities to Purchaser who is located in the Maui district. Taxpayer shall allocate the commission income to the Oahu district where the services of selling securities are rendered. Taxpayer shall be subject to the 0.5 per cent county surcharge because such services are rendered in the Oahu district.

Example 6: Taxpayer is a real estate company licensed as a real estate broker under chapter 467, HRS. Taxpayer has places of business in the Oahu district, Kauai district, Maui district, and Hawaii district. Each of Taxpayer's brokers and salespersons is based in one of the places of business. The brokers and salespersons travel to other taxation districts to meet with clients, manage clients' properties, show properties, negotiate, review and close transactions. Brokers and Salespersons sell a property in the Oahu district. Taxpayer shall allocate the commission income received to the taxation districts where the real property is located. The gross income derived from the sale or leasing of real property in the Oahu district shall be allocated to the Oahu district where the real property is located. All of the gross income paid to Taxpayer and Taxpayer's brokers and salespersons shall be subject to the 0.5 per cent county surcharge in this case because the real property is located in the Oahu district. Taxpayer and each of Taxpayer's brokers and salespersons shall allocate the income that Taxpayer, Brokers or Salespersons receives under section 237-18(e), HRS, to the taxation district where the real property is located, regardless of the location of the place of business of Taxpayer, Brokers or Salespersons. Brokers or Salespersons shall also be subject to the 0.5 per cent county surcharge for real property sold in the Oahu district. [Eff 12/07/2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

HRS §237-8.6 §18-237-8.6-05 Allocation of gross income from the rental or lease of tangible and intangible personal property. (a) Except as provided in this section, gross income from the rental or lease of tangible and intangible personal property, shall be allocated to the taxation district in which the property is used. If the property is used in more than one taxation district, the taxpayer shall allocate the gross income by using any reasonable allocation method that clearly, fairly and properly reflects the gross income to each taxation district; provided that the allocation method is documented. The county surcharge pursuant to section 237-8.6, HRS, shall be imposed on gross income and gross proceeds for renting or leasing of personal property to the extent that the property is used in the Oahu district.

Example 1: Taxpayer is engaged in the business of renting motor vehicles from a place of business in each of the four taxation districts. Taxpayer shall allocate the gross income to the taxation district in which the motor vehicle is used. Taxpayer shall be subject to the 0.5 per cent county surcharge on the gross income from motor vehicles used in the Oahu district because the personal property is being used in the Oahu district.

Example 2: Taxpayer, located in the Oahu district, is engaged in the business of renting equipment. Taxpayer rents equipment to XYZ, located in the Maui district, for a job in the Kauai district. Taxpayer shall allocate the gross income from this rental to the Kauai district where the property is used. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the property is not used in the Oahu district.

Example 3: Taxpayer, located in the Oahu district, has written and copyrighted a song. A musician pays Taxpayer a royalty to perform that song for profit in a hotel in the Maui district. Taxpayer shall allocate the gross income from the license of the copyright to the Maui district where the property is used. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the property is not used in the Oahu district.

Example 4: Same facts as in example 3, except that Taxpayer is located in the Maui district. Taxpayer shall allocate the gross income from the license or royalty of his intangible personal property to the Maui district where the property is used. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the property is not used in the Oahu district.

Example 5: Same facts as in example 3, except that Taxpayer is located in the Maui district and the licensee is in the Oahu district. Taxpayer shall allocate the gross income from the license of his copyright to the Oahu district where the property is used. Taxpayer shall be subject to the 0.5 per cent county surcharge because the property is used in the Oahu district.

(b) Where a taxpayer rents or leases tangible personal property, or licenses or receives royalty from intangible personal property, which is used in more than one taxation district, the gross income shall be allocated to the taxation districts by using any reasonable allocation method that clearly, fairly, and properly reflects the gross income to each taxation district; provided that the allocation method is documented. This rule also applies to property, which

is constantly in transit between taxation districts, such as barges, containers, and aircraft without home ports or bases. Taxpayer shall be subject to the 0.5 per cent county surcharge to the extent that the gross income from the rental or lease of the personal property is allocated to the Oahu district pursuant to a reasonable allocation method.

Example 1: Taxpayer is engaged in the business of renting equipment to XYZ to be used in the Maui district and the Oahu district. The equipment will be used in the Maui district for six months and in the Oahu district for six months. Taxpayer shall allocate fifty per cent of the gross income from the rental of the equipment to the Maui district and fifty per cent to the Oahu district. Taxpayer shall be subject to the 0.5 per cent county surcharge on fifty per cent of the gross income because using a reasonable allocation method based on time used, the equipment is used fifty per cent of the time in the Oahu district.

Example 2: Taxpayer is engaged in the business of leasing containers to XYZ. These containers are constantly in transit between taxation districts. Taxpayer shall allocate the gross income by using a reasonable allocation method among the taxation districts that clearly, fairly, and properly reflects gross income in each taxation district and document that allocation method. Taxpayer shall be subject to the 0.5 per cent county surcharge on the gross proceeds allocable to the Oahu district as determined under a reasonable allocation method. [Eff 12/07/2007] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

HRS §237-8.6 §18-237-8.6-06 Allocation of gross income from the rental or lease of real property. Gross income from a taxpayer's rental or lease of real property in this State shall be allocated to the taxation district where the real property is located. Lessors are subject to the 0.5 per cent county surcharge for rental or lease of real property located in the Oahu district. Lessors in taxation districts other than the Oahu district are subject to the county surcharge if they rent or lease real property located in the Oahu district.

Example: Taxpayer rents condominium units located in each of the four taxation districts. Taxpayer shall allocate the gross income from the rental of each unit to the taxation district in which the condominium unit is located. Taxpayer shall be subject to the 0.5 per cent county surcharge on gross income from the condominium units rented in the Oahu district because the real property is located in the Oahu district. [Eff 12/07/2006] (Auth: HRS §§231- 3(9), 237-8) (Imp: HRS §237-8.6)

HRS §237-8.6 §18-237-8.6-07 Allocation of gross income from contracting. Gross income from contracting shall be allocated to the taxation district where the job site is located. Contractors, with a home office in taxation districts other than the Oahu district are subject to the 0.5 per cent county surcharge if the job site is located in the Oahu district. Gross income from contracting in the Oahu district shall be allocated to the Oahu district because the job site is located in the Oahu district.

Example 1: Taxpayer with an office located in the Oahu district contracts for a construction project in the Maui district. Taxpayer shall allocate the gross income from this project to the Maui district. Taxpayer shall not be subject to the 0.5 per cent county surcharge because the job site is located outside of the Oahu district.

Example 2: Assume the same facts in Example 1, except that Taxpayer is the prime contractor for the project and Taxpayer subcontracts various aspects of the job to architect W and engineer X, located in the Oahu district. Taxpayer shall allocate the gross income from this project to the Maui district. W and X shall allocate the gross income they receive from Taxpayer to the Maui district. Taxpayer, W, and X shall not be subject to the 0.5 per cent county surcharge because the job site is located outside of the Oahu district. [Eff 12/07/2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

HRS §237-8.6 §18-237-8.6-08 Allocation of gross income from interest. (a) The gross income from a taxpayer's investment interest shall be allocated to the taxation district where the control of the investment is located unless the taxpayer can show that a different location should control. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly and properly reflects the gross income to the taxation district; provided that the allocation method is documented. Taxpayer shall be subject to the 0.5 per cent county surcharge if the business's control of the investment is in the Oahu district.

Example 1: Taxpayer has retail locations in all taxation districts and has corporate offices located in the Oahu district. Taxpayer has a central cash management account controlled by the corporate office located in the Oahu district that places the gross receipts from all retail locations into one interest bearing bank account. Taxpayer shall allocate the interest received from this bank account to the Oahu district because the account is controlled by the corporate office located in the Oahu district. Therefore, the interest shall be subject to the 0.5 per cent county surcharge.

Example 2: The same facts as in example 1, except that a separate bank account is created for the Maui district retail locations. The money deposited into that bank account is used for improvements to the Maui district stores and controlled by the Maui district retail locations. Interest on this bank account shall not be subject to the 0.5 per cent county surcharge because the account is being controlled outside of the Oahu district.

(b) The gross income from a taxpayer's deferred payment interest shall be allocated to the taxation district in which the sale that generated the interest is assigned under section 18-237-8.6-02 or 18-237-8.6-06. Taxpayer shall be subject to the 0.5 per cent county surcharge on the interest if the sale that generated the interest is allocated to the Oahu district. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly, and properly reflects the gross income to the appropriate taxation district; provided that the allocation method is documented.

Example 1: Taxpayer has retail locations in all of the taxation districts. Taxpayer sells goods on an installment basis or deferred payment basis. Taxpayer shall allocate the interest received on the sales by credit or on the installment basis to the taxation district in which the sales that generated the interest is assigned under section 18-237-8.6-02. The interest income generated from sales that are allocated to the Oahu district are likewise allocated to the Oahu district and subject to the 0.5 per cent county surcharge.

Example 2: Taxpayer, who does not have an office in the State, sells business or rental real estate located in the Oahu district pursuant to an agreement of sale, which provides for deferred payments of the sales price and an interest charge. Taxpayer shall be subject to the 0.5 per cent county surcharge on the interest income from the agreement of sale because the real estate that is the subject of the agreement of sale is located in the Oahu district. [Eff 12/07/2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

HRS §237-8.6 §18-237-8.6-09 Allocation of gross income of theaters, amusements, etc. The gross income from the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, or any other place at which amusements are offered to the public shall be allocated to the taxation district in which the event takes place. Taxpayers shall be subject to the 0.5 per cent county surcharge on gross income generated from events in the Oahu district. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly, and properly reflects the gross income to the appropriate taxation district; provided that the allocation method is documented.[Eff 12/07/2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

HRS §237-8.6 §18-237-8.6-10 All others. The gross income or gross proceeds received by a taxpayer who reports business activity on Form G-45 or Form G-49 under the classification "all others" shall be allocated to a taxation district based upon the rules for allocating gross income for the business activity which is the most similar to the taxpayer's particular business activity. Alternatively, the taxpayer may allocate the gross income by using any reasonable allocation method that clearly, fairly and properly reflects the gross income to the appropriate taxation district; provided that the allocation method is documented. [Eff 12/07/2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

SUBCHAPTER 2

LICENSES; TAX; EXEMPTIONS

§18-237-9 to §18-237-12 (Reserved)

§18-237-13 Amended and renumbered.

HRS §237-13(1) §18-237-13-01 **Tax on manufacturers.** Containers and packaging materials. See section 18-237-4(b). [Eff 2/16/82; am 12/1/88; am 2/1/89; am 7/1/90; am and ren §18-237-13-01 12/27/90] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-13)

HRS §237-13(2) §18-237-13-02 **Tax on business of selling tangible personal property; producing.** (a) Recapping tires or selling tangible personal property for use in recapping tires.

- (1) Sales by recapper. This paragraph applies to a person who purchases used tires or accepts used tires as trade-ins and subsequently recaps the same for the person's own stock for sale. When tires covered by this paragraph are sold, the sales take the rate of:
 - (A) One-half of one per cent if made to another person who purchases the tires for purposes of resale; and
 - (B) Four per cent if made for consumption or use by the purchaser and not for resale.

Example 1: A tire recapper (taxpayer R) sells tires from stock to a service station operator (taxpayer S) who purchases the tires for purposes of resale. Taxpayer R is subject to the general excise tax at the rate of one-half of one per cent on the amount received from taxpayer S.

Example 2: A tire recapper (taxpayer R) sells tires from stock to a customer who installs the tires on the customer's family automobile. Taxpayer R is subject to the general excise tax at the rate of four per cent on the amount received from the customer.

- (2) Sales by purchaser of recapped tires. This paragraph applies to the gross income of a person who purchases recapped tires for purposes of resale. When tires covered by this paragraph are sold, such sales take the rate of:
 - (A) One-half of one per cent if made to another person who purchases the tires for purposes of resale; and
 - (B) Four per cent if made for consumption or use by the purchaser and not for resale.
- (3) Sales of tangible personal property for use in tire recapping. This paragraph applies to a person who sells tangible personal property for use in tire recapping. When personal property covered by this paragraph is sold to a person using or consuming the personal property in tire recapping, such sales take the rate of:
 - (A) Four per cent if made to a tire recapper whose gross income is taxable at the rates stated in section 18-237-13-06.11; and
 - (B) One-half of one per cent if made to a tire recapper whose gross income is taxable at the rates stated in paragraph (1).
- (b) Furnishing or use of trading stamps and similar devices. See section 18-237-13-10.
- (c) Containers and packaging materials. See section 18-237-4(b).
- (d) Resale certificates and sales at wholesale. This subsection sets forth the application of section 237-13(2)(F), HRS.
 - (1) Scope. A seller, in proper cases, may take from the purchaser of tangible personal property a certificate, in the form the director prescribes, certifying that the sale is a sale at wholesale. This subsection sets forth the effect as to resale certificates; defines "sales at wholesale"; sets forth the duties of sellers and purchasers in determining whether a sale is at wholesale; and prescribes the form of the certificate referred to in this subsection and in the administration and enforcement of these rules as a "resale certificate".
 - (2) Effect of rules as to resale certificates.

- (A) A purchaser who furnishes a resale certificate in one of the prescribed general forms to a seller who accepts the certificate, thereby makes the certificate applicable to each sale of tangible personal property by the seller to that purchaser until the certificate is revoked by notice in writing, except those orders as to which it is specified in writing that the certificate does not apply. A special form of resale certificate is prescribed for use by sellers, at their option, for certain sales to purchasers who are in the contracting business, or who are subject to taxation as if so engaged. A purchaser who furnishes a resale certificate thereby makes the certificate applicable to each sale of materials or commodities made by the seller to that purchaser in connection with the particular work or project identified by this special form of resale certificate until the certificate is revoked by notice in writing, except those orders as to which it is specified by notice in writing that the certificate does not apply.
- (B) A purchaser, by giving a resale certificate in any of the prescribed forms to a seller who accepts the certificate, certifies that unless the purchaser gives notice in writing, which either specifies that the certificate does not apply to a particular order or revokes the certificate altogether, the purchaser will upon demand of the seller pay to the seller the amount of the additional tax which by reason thereof is imposed upon the seller in the event any sale of tangible personal property by the seller to the purchaser (or in the case of a resale certificate in the special form, any sale made in connection with the particular work or project identified by the special form) is not in fact a "sale at wholesale," as defined by section 18-237-4, or is not a sale at wholesale to the extent stated in the resale certificate, as the case may be.
- (C) If no resale certificate is given, or if there is a certificate but not in the proper form, or if the certificate is made inapplicable to a specific sale by a notice in writing, or if the certificate is revoked, there is a presumption that the sales which, in whole or in part, are not covered by an applicable certificate in the proper form, are not at wholesale. However, this presumption does not apply if the seller is one having a business which consists exclusively of sales at wholesale, as defined.
- (D) The additional amount which the seller may require the purchaser to pay pursuant to subparagraph (B), is illustrated by the following examples:

Example 1: Seller manufactures animal feed as a by-product. On a sale as to which there is an applicable resale certificate, seller's price is \$100. Tax is reported and remitted by the seller in the amount of \$.50, at the one-half of one per cent manufacturing rate. However, the sale in fact is not at "wholesale" because the feed is used by the purchaser for feeding saddle animals. Seller is assessed at the four per cent rate applicable to sales other than at wholesale. The purchaser is liable to pay the seller \$4.

Example 2: The facts are the same except that the seller is a producer of agricultural products, which are the subject of the sale. The amount which the purchaser is liable to pay the seller is \$4.

Example 3: The sale is of animal feed brought in from the mainland. On a sale where there is an applicable resale certificate, seller's price is \$100. Tax is reported and remitted by the seller in the amount of \$.50, at the one-half of one per cent wholesale rate. However, the sale in fact is not at "wholesale" because the feed is used by the purchaser for feeding saddle animals. Seller is assessed at the four per cent rate applicable to sales other than at wholesale. The purchaser is liable to pay the seller \$4.

Example 4: The sale is of cement brought in from the mainland. On a sale where there is an applicable resale certificate, seller's price is \$100. Tax is reported and remitted by the seller in the amount of \$.50, at the one-half of one per cent wholesale rate. However, the sale in fact is not at "wholesale" because the project consists in the improvement of a rental unit owned by the purchaser and which the purchaser continues to hold. Seller is assessed at the four per cent rate applicable to sales other than at wholesale. The purchaser is liable to pay the seller \$4.

- (3) "Sale at wholesale", defined. See section 18-237-4.

- (4) Duties of the seller. It is the duty of the seller, under the penalties prescribed by sections 237-41, 237-48, 231-34, and 231-39, HRS, to:
- (A) Refuse to accept a resale certificate if it is not in proper form and properly made out; or if having due regard to the type of property sold, the nature and character of the business of the purchaser, and the generally known customs or practices of the purchaser's trade, it appears that the sales made to the purchaser will not be sales at wholesale, or will not be sales at wholesale to the extent stated in the certificate;
 - (B) Make inquiry and ascertain the facts when, having due regard to the type of property sold, the nature and character of the business of the purchaser, and the generally known customers or practices of the purchaser's trade, the seller has reason to believe that some of the sales to the purchaser, in addition to those of which the seller is notified, are not sales at wholesale;
 - (C) Report for taxation at the rate of four per cent all sales of tangible personal property which the seller knows are not sales at wholesale, unless upon inquiry the seller ascertains the facts as to those sales which, in fact, are sales at wholesale;
 - (D) Keep as a part of the seller's records all resale certificates accepted by the seller, notices of inapplicability of such resale certificates to particular sales, and notices of revocation of such certificates; and
 - (E) Keep proper records, as required by section 237-14, HRS, correctly segregating the items of gross income, gross proceeds of sales, and value of products taxable at less than four per cent, in order that a lesser rate may be applied.
- (5) Duties of the purchaser. It is the duty of the purchaser, under the penalties prescribed by sections 237-41, 237-48, and 231-34, HRS, to:
- (A) Furnish to sellers only resale certificates as are in proper form and properly made out;
 - (B) Give notice of revocation of resale certificates furnished to sellers, if the purchaser no longer holds a general excise tax license, if the purchaser has a different license number under the general excise tax law from that stated on the certificate, or in any other case of a material change in facts;
 - (C) Furnish to sellers the facts as to whether sales are at wholesale; and
 - (D) Keep as a part of the purchaser's records copies of all resale certificates given by the purchaser, notices of inapplicability of such resale certificates to particular sales, and notices of revocation of such certificates.
- (6) Forms of resale certificates. Three forms of resale certificates are prescribed, two types of general form and a special form which may be used by sellers, at their option, for sales to purchasers who are in the contracting business, or who are subject to taxation the same as if engaged in the contracting business, of materials and commodities as set forth in section 18-237-4(a)(3), in connection with a particular project identified in the special form of certificate. [Eff 2/16/82; am 12/1/88; am 2/1/89; am 7/1/90; am and ren §18-237-13-02 12/27/90] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-13)

HRS §237-13(2) §18-237-13-02.01 Tax on business of selling tangible personal property by an out-of-state seller, including drop shipments. (a) For the purposes of this section:

“Accept or Acceptance” means the purchaser or its agent inspecting the tangible personal property and taking physical possession of the tangible personal property or having dominion and control over the tangible personal property.

“Agent” means a person authorized by the purchaser to act on behalf of the purchaser and includes the power to inspect and accept or reject the tangible personal property.

“Delivery” means the act of transferring possession of tangible personal property. It includes, the transfer of goods from consignor to freight forwarder or for-hire carrier, from freight forwarder to for-hire carrier, one for-hire carrier to another, or for-hire carrier to consignee.

“Drop Shipment”, sometimes known as direct delivery, means the delivery and acceptance of tangible personal property by a customer in Hawaii from a manufacturer or wholesaler who is someone other than the seller with whom the customer placed the order.

“Landed value” means the value of imported tangible personal property which is the fair and reasonable cash value of the tangible personal property when it arrives in Hawaii. It includes the sales price, shipping and handling fees, insurance costs, and customs duty. It does not include sales tax paid to another state.

“Nexus” means the activity carried on by a seller in Hawaii which is sufficiently connected with the seller's ability to establish or maintain a market for its products in Hawaii. It includes issues of taxability addressed

under the Due Process and Commerce Clauses of the United States Constitution to support the application of the general excise tax and the use tax under chapters 237 and 238, HRS, respectively.

“Place of delivery” means the state or place where the purchaser or its agent accepts a delivery of tangible personal property.

(b) Imposition of general excise tax on sales of tangible personal property to customers in Hawaii. Section 237-13, HRS, imposes “privilege taxes against persons on account of their business and other activities in the State” Section 237-2, HRS, states that “business” includes “all activities (personal, professional, or corporate), engaged in or caused to be engaged in with the object of gain or economic benefit either direct or indirect”

- (1) The act or place of passing of title is not the determinative factor for purposes of imposing the general excise tax. In states imposing a retail sales tax where a sale is defined as the transfer of title or ownership, the place where title passes may be relevant. The general excise tax, however, is not a sales tax imposed when title passes. Rather, the general excise tax is a gross receipts tax imposed when business is transacted in Hawaii.
- (2) The general excise tax law looks to the place of delivery of tangible personal property to determine whether the sale of tangible personal property is business transacted in Hawaii.
- (3) Hawaii does not impose the general excise tax on sales of tangible personal property which originate outside of this State unless the place of delivery of the tangible personal property is in Hawaii and the seller has nexus. There must be both: (1) a place of delivery within Hawaii by the purchaser, or its agent; and (2) the seller must have nexus for the general excise tax to apply to a particular sale. The general excise tax will not be imposed if one of these elements is missing.
- (4) Delivery of tangible personal property to a freight consolidator, freight forwarder, or for-hire carrier utilized only to arrange for and/or transport the tangible personal property does not constitute acceptance of the tangible personal property by the purchaser or its agent unless the freight consolidator, freight forwarder, or for-hire carrier has expressed written authority to accept the tangible personal property as an agent for the purchaser. Simply signing the bill of lading without this expressed written authority is not sufficient.
- (5) When the place of delivery of the tangible personal property is to a customer in Hawaii and the seller has nexus, the sale of that tangible personal property constitutes business subject to the general excise tax. Section 237-22, HRS, states that gross income or gross proceeds of sale will be exempt if the State is prohibited from taxing the gross income under federal law or constitutional principles. If an out-of-state seller has no nexus with Hawaii, its gross income or gross proceeds of sale would be exempt under section 237-22, HRS.

(c) Imposition of the use tax on the sale of tangible personal property to a customer in Hawaii. Section 238-2, HRS, imposes use tax “on the use in this State of tangible personal property which is imported . . . for use in the State” if it is purchased from a seller that does not have a general excise tax license. All tangible personal property used or consumed in the State is subject to a uniform tax burden irrespective of whether it is acquired within or without the State.

- (1) The use tax is levied on the importer of tangible personal property based upon the landed value of the tangible personal property imported.
 - (2) The tax rate is one-half of one per cent if the tangible personal property is intended for resale at retail, four per cent if the tangible personal property is intended for consumption or use by the importer or purchaser, or no tax if the tangible personal property is intended for resale to a reseller licensed under the general excise tax law.
- (d) The liability for paying the general excise tax or the use tax is dependent on all the factual circumstances.
- (e) The following is an example involving two parties and is treated as a single transaction.

Example: S, an out-of-state seller of tangible personal property, receives an order over the telephone or through the mail, from H, a Hawaii customer who is the ultimate consumer. H requests that the tangible personal property be delivered to H in Hawaii. S ships the tangible personal property for delivery to and acceptance by H in Hawaii.

The additional fact as to whether or not S has nexus with Hawaii determines the result in this example:

- (1) If S has nexus with Hawaii, S’s sale of tangible personal property constitutes business in Hawaii for purposes of the general excise tax law. As a result, S must

obtain a general excise/use tax license. S is considered the importer for resale at retail and is subject to the use tax at one-half of one per cent. S is also subject to the general excise tax at four per cent on the sale.

- (2) If S does not have nexus with Hawaii, pursuant to section 237-22, HRS, the general excise tax is not imposed upon S. Because S is not a licensed seller and the import is for consumption by H, H is subject to the use tax at four per cent.

(f) The following is an example of a drop shipment that involves three parties and is treated as two separate transactions.

Example: S, an out-of-state seller of tangible personal property, receives an order over the telephone or through the mail, from H, a Hawaii customer who is the ultimate consumer. W is an out-of-state wholesaler of tangible personal property. S notifies W of the order and requests that W ship the tangible personal property directly to H in Hawaii. W then ships the tangible personal property for delivery to and acceptance by H in Hawaii.

The following are the results when differing additional facts as to whether S and W have nexus with Hawaii and are properly licensed under the general excise tax law are incorporated into the example:

- (1) If neither S nor W has nexus with Hawaii and both are unlicensed, the importation of the tangible personal property by H is from an unlicensed seller for consumption. H is subject to the use tax at four per cent.
- (2) If S has nexus with Hawaii and is licensed but W is unlicensed and has no nexus, S is considered to have imported the tangible personal property for resale at retail and is subject to the use tax at one-half of one per cent. The sale from S to H is a retail sale. S's gross income from the sale is subject to the general excise tax at the rate of four per cent.
- (3) If both S and W have nexus with Hawaii and are licensed, both sales would be subject to the general excise tax. The sale from W to S is a wholesale sale. W's gross income is taxable at one-half of one per cent. The sale from S to H is a retail sale. S's gross income is taxable at four per cent. There is no use tax because W imported the tangible personal property for resale to a licensed reseller.
- (4) If W has nexus with Hawaii and is licensed but S is unlicensed and has no nexus, the sale from W to S does not qualify as a wholesale sale under section 237-4(1), HRS, because S is not a licensed seller for general excise purposes, therefore, W is subject to the general excise tax at the rate of four per cent. W is considered to have imported the tangible personal property for resale at retail and is subject to the use tax at one-half of one per cent. The general excise tax is not imposed on the sale from S to H because S does not have sufficient nexus with Hawaii. Since W is the importer of the tangible personal property and H is not, H would not be subject to the use tax. [Eff 5/26/98] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §§237-4(1), 237-13(2), 237-21, 237-22, 238-2, 238-3(c))

HRS §237-13(3) §18-237-13-03 Tax upon contractors. (a) For the purposes of this section:

“Contractor” includes 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; every person engaging in the practice of architecture, professional engineering, land surveying, and landscape architecture, as defined in section 464-1, HRS; and every person engaged in the practice of pest control or fumigation as a pest control operator as defined in section 460J-1, HRS.

“Licensed specialty contractor” means the same as the term is defined in section 444-7, HRS, in chapter 16-77 and in Exhibit A entitled, Specialty Contractors Classifications, located at the end, and made a part, of this chapter, and who is licensed under chapter 444, HRS.

“Owner-contractor” means an owner or lessee of property who builds or improves residential, farm, industrial, or commercial buildings or structures on such property for the owner-contractor’s own use, or for use by the owner-contractor’s grandparents, parents, siblings, or children and does not offer such building or structure for

sale or lease, as distinguished from the business of contracting which is taxed under section 237-13(3)(D), HRS. The sale or lease, or offering for sale or lease, of such structure within one year after completion is prima facie evidence that the construction or improvement of such structure was undertaken for the purpose of sale or lease; provided that this shall not apply to residential properties sold or leased to employees of the owner or lessee; provided further that the owner or lessee registers for an exemption from the contractors licensing law, under section 444-9.1, HRS.

“Person” means the same as the term is defined in section 237-1, HRS.

“Prime contractor” means a person who: (1) contracts directly with the owner, lessor, lessee, developer, mortgagor, mortgagee, or any other person, including another contractor or licensed specialty contractor, to engage in the activities listed in the definition of a contractor in chapter 237, HRS; or (2) performs the activities listed in the definition of a contractor in chapter 237, HRS, except that this does not include an owner-contractor.

“Subcontractor” means a person who contracts with the prime contractor to engage in the activities listed in the definition of a contractor in chapter 237, HRS, and this rule.

(b) Subcontract deduction. Section 237-16, HRS, imposes the general excise tax at the rate of four per cent upon the gross income received or derived from the business of a contractor. That section, however, does not apply to gross income received from contracting with the state, county, or federal government, those persons exempted under section 237-23, HRS, and those persons licensed under chapter 237, HRS.

The gross income of a contractor which is not subject to taxation under section 237-16, HRS, however, shall be subject to taxation under section 237-13(3), HRS. Section 237-13(3)(A), HRS, imposes the general excise tax at the rate of four per cent on the gross income of the contracting business. A prime contractor is allowed a deduction from gross income for payments made to a subcontractor or licensed specialty contractor; provided the requirements of section 237-13(3)(B), HRS, and this section are satisfied.

These requirements are as follows:

- (1) The prime contractor is licensed under chapter 237, HRS;
- (2) The subcontractor or specialty contractor is licensed under chapter 237, HRS;
- (3) The subcontractor is a contractor as defined in section 237-6, HRS, or the subcontractor is a specialty contractor licensed by the department of commerce and consumer affairs, pursuant to chapter 444, HRS, except that where a prime contractor and subcontractor or specialty contractor perform work exclusively on federal property the specialty contractor must be licensed under chapter 237, HRS, but need not be licensed pursuant to chapter 444, HRS;
- (4) The general excise taxes due on the amount claimed as a deduction by the prime contractor must be paid by the subcontractor or the licensed specialty contractor or by the prime contractor on behalf of the subcontractor or the licensed specialty contractor.

The prime contractor may attempt to secure the payment of the excise tax by the subcontractor or licensed specialty contractor by issuing a check payable jointly to the subcontractor or licensed specialty contractor and the department of taxation for the amount of the general excise tax due for the work done by the subcontractor or licensed specialty contractor. Subsequently, the subcontractor or licensed specialty contractor may sign the check and deposit it with the department of taxation. If the subcontractor or licensed specialty contractor fails to deposit the check with the department of taxation, however, the prime contractor shall not be entitled to the subcontract deduction.

Rather than relying upon the subcontractor or licensed specialty contractor to pay the tax to the department of taxation, the prime contractor may withhold the general excise tax from the gross income paid to the subcontractor or licensed specialty contractor and remit those taxes to the department of taxation together with a separate general excise tax return with the name and general excise number of the subcontractor or licensed specialty contractor. There must exist, however, some indicia that the subcontractor or licensed specialty contractor has authorized the prime contractor to withhold the tax due and remit the tax to the department of taxation. The prime contractor shall provide the subcontractor with a copy of the general excise tax return filed by the prime contractor on behalf of the subcontractor or licensed specialty contractor. A copy of the general excise tax return may serve as the receipt required by section 231-13(3)(B), HRS.

The department of taxation may audit the prime contractor and disallow the prime contractor's subcontract deduction if the tax is not paid by the subcontractor or licensed specialty contractor or by the prime contractor on behalf of the subcontractor or licensed specialty contractor. If the subcontract deduction is disallowed, the prime contractor shall pay to the department of taxation the amount of the additional tax due, including any applicable interest from the date of the filing of the return in which the prime contractor claimed the subcontract deduction. The statute of limitations for collecting the tax and

interest from the prime contractor shall run from the date of the filing of the return in which the prime contractor claimed the subcontract deduction. If the department of taxation collects the tax and interest relating to a disallowed subcontract deduction from the prime contractor, the department will not subsequently attempt to collect a tax which is attributable to the disallowed subcontract deduction from the subcontractor or licensed specialty contractor who initially failed to pay the tax; and

- (5) The prime contractor shall provide the department of taxation with the name and general excise number of each subcontractor or licensed specialty contractor for which the deduction is claimed and the total amount of gross proceeds paid to each subcontractor or licensed specialty contractor. The prime contractor shall report this information on either the back side of the prime contractor's general excise tax monthly, quarterly, or semi-annual return and summarized on the annual return or on a separate schedule attached to the respective returns. A prime contractor may claim the subcontract deduction only when the prime contractor correctly reports its gross income as contracting income on the prime contractor's general excise tax returns. Thus, a taxpayer who reports gross income as professional services, rather than as contractor income, is erroneously reporting the income and will be questioned by the department of taxation about the subcontract deduction.

(c) Whether a prime contractor qualifies for the subcontract deduction shall be determined on the basis of all the facts of each particular case. The application of this deduction is illustrated in the following examples:

Example 1: ABC Construction Company, a contractor licensed under chapter 237, HRS, is the prime contractor in the construction of a commercial building for \$100,000. ABC then subcontracts various aspects of the job to architect W for \$10,000, engineer X for \$10,000, land surveyor Y for \$10,000, and landscape architect Z for \$10,000, all of whom are licensed pursuant to chapters 237 and 444, HRS, and are included in the definition of a contractor in section 237-6, HRS. Section 237-13(3)(B), HRS, allows a prime contractor a deduction for payments to subcontractors and licensed specialty contractors. Accordingly, ABC, the prime contractor, is subject to the general excise tax at the rate of four per cent on \$60,000, which is the \$100,000 contract less the \$10,000 taxable to each of the four subcontractors, W, X, Y, and Z. W, X, Y, and Z are subject to the general excise tax at the rate of four per cent on the payments received from ABC.

Example 2: Assume the same facts as in Example 1, except that W fails to pay the general excise tax due on the payment that W receives from ABC and ABC claims the subcontract deduction for the payment to W. ABC shall pay to the director, upon demand, \$400, which is the amount of the additional tax due on the amount W received.

Example 3: X, an engineer, contracts for \$100,000 to perform engineering work on a building. X is acting as a prime contractor and subcontracts \$10,000 of the engineering work to Y, another engineer who specializes in designing fire sprinkler systems. X reports the gross income for the contract as professional services and deducts \$10,000 from gross income for the subcontract for Y. This deduction will be questioned because X incorrectly reported the gross income received as professional services. Providers of professional services are not allowed to take subcontract deductions. If X had correctly reported the gross income as contracting income, the subcontract deduction would not be questioned.

Example 4: ABC Construction Company, a contractor licensed under chapter 237, HRS, is the prime contractor in the renovation of a residential building for \$50,000. While renovating the building, ABC discovers termites and subcontracts with DEF Pest Control Operator, a pest control operator licensed pursuant to chapters 237 and 460J, HRS, to fumigate the building for \$5,000. Additionally, ABC subcontracts a portion of the job for \$5,000 to GHI Acoustical and Installation Contractor, a specialty contractor licensed pursuant to chapters 237 and 444, HRS. Section 237-13(3)(B), HRS, allows a prime contractor a deduction for payments to subcontractors and licensed specialty contractors. Accordingly, ABC, the prime contractor, is subject to the general excise tax at the rate of four per cent on \$40,000, which is the \$50,000 contract less the \$5,000 taxable to DEF, the subcontractor, and the \$5,000 taxable to GHI, the licensed specialty contractor. DEF and GHI are subject to the general excise tax at the rate of four per cent on the payments received from ABC.

Example 5: ABC Land Planning Company works with architects and engineers to plan construction projects by providing financial and market analysis and feasibility studies. ABC contracts with X Landscape Surveyor and Y Landscape Architect, who are both licensed under chapter 237, HRS, and are included in the definition of a contractor in section 237-6, HRS, to do various aspects of the projects. Section 237-13(3)(B), HRS, allows a prime contractor a deduction for payments to subcontractors and licensed specialty contractors. ABC is not a prime contractor since it is not engaged in the business of contracting. See, section 237-6, HRS. Accordingly, ABC is not entitled to a deduction for the payments to X and Y.

Example 6: ABC Construction Company, a contractor licensed under chapter 237, HRS, is the prime contractor in the construction of a residential building. ABC purchases cabinets manufactured by D Supply House from D and ABC installs the cabinets. ABC also rents equipment from E Rental Company and subcontracts with F Solar Energy Systems Contractor, a specialty contractor licensed under chapters 237 and 444, HRS, to assemble and install a solar hot water system. Section 237-13(3)(B), HRS, allows a prime contractor a deduction for payments to contractors and licensed specialty contractors. Neither D nor E are subcontractors or licensed specialty contractors. F, however, is a licensed specialty contractor. Accordingly, ABC, the prime contractor, is entitled to a deduction for the payment to F but is not entitled to a deduction for the payments to D and E. F is subject to the general excise tax at the rate of four per cent on the payment received from ABC.

Example 7: ABC Supply House sells customized cabinets to its customers, including DEF Construction Company. DEF installs the cabinets for its customers. Additionally, ABC, which has a specialty contractor's license, sells and installs cabinets for GHI Construction Company. GHI is entitled to a subcontract deduction for the payment to ABC. DEF, however, is not entitled to a deduction for the payment to ABC as ABC is not engaged in the contracting business, as such, when ABC sells the cabinets to DEF.

Example 8: ABC Construction Company, a contractor licensed under chapter 237, HRS, is the prime contractor in the construction of a residential building. ABC contracts with Edifice Wrecks, a licensed specialty contractor, to demolish the existing structure and remove the debris. ABC purchases lumber from E Supply House to be used in the construction of the building. ABC subsequently contracts with F Hauling Company, who is licensed by the Public Utilities Commission as a carrier of general commodities and household goods, to haul the lumber to the job site. F is subject to chapter 239, HRS, and is not licensed under chapter 237, HRS. Section 237-13(3)(B), HRS, allows a prime contractor a deduction for payments to contractors and licensed specialty contractors. ABC is entitled to a deduction for the payments to Edifice Wrecks, a licensed specialty contractor. ABC, however, is not entitled to a deduction for the payments to E and F.

Example 9: ABC Construction Company, DEF Construction Company, and XYZ Bank form a joint venture to develop a shopping center. The joint venture will sell or otherwise dispose of the shopping center within one year of the completion. The joint venture contracts with G Landscape Surveyor and H Landscape Architect, who are both licensed under chapter 237, HRS, and are included in the definition of a contractor in section 237-6, HRS, to do various aspects of the project. Section 237-13(3)(B), HRS, allows a prime contractor a deduction for payments to subcontractors and licensed specialty contractors. The definition of a person under section 237-1, HRS, includes a joint venture. Accordingly, the joint venture is a prime contractor and taxable as a contractor on the disposition of the property. The joint venture, however, is entitled to a deduction for the payments to G and H. G and H are subject to the general excise tax at the rate of four per cent on the payments received from the joint venture.

Example 10: Individual A, who is not engaged in the construction business, purchases land and decides to build a residence. A, an owner-contractor under sections 444-2 and 444-9.1, HRS, and this section, contracts with Contractor X, who is licensed under chapter 237, HRS, and is included in the definition of a contractor in section 237-6, HRS, to do various aspects of the job. The definition of a prime contractor does not include an owner-contractor, such as A. Thus, A is not entitled to a subcontract deduction for the payments to X, and X is subject to the general excise

tax at the rate of four per cent on the payments received from A. If, however, X fails to pay the general excise tax due on the payment that X receives from A, A is not liable for the nonpayment of the tax.

Example 11: Assume the same facts as Example 10, except that X contracts with Contractors Y and Z, who are both licensed under chapter 237, HRS, and are included in the definition of a contractor in section 237-6, HRS, to do various aspects of the project. X is entitled to a deduction for the payments to Y and Z. Y and Z are subject to the general excise tax at the rate of four per cent on the payments received from X.

Example 12: ABC Construction Company, a contractor licensed under chapter 237, HRS, is the prime contractor for the construction of a commercial building. ABC then subcontracts with DEF Company, a specialty contractor licensed under chapter 237, HRS, but not licensed under chapter 444, HRS, to do part of the job. Section 237-13(3)(B), HRS, allows a prime contractor a deduction for payments to subcontractors and specialty contractors licensed under chapter 444, HRS. DEF, however, is an unlicensed specialty contractor. Accordingly, ABC is not entitled to a deduction for the payments to DEF.

Example 13: Assume the same facts as in Example 12 above, except that the renovation will be done on a commercial building which is exclusively on federal property. The specialty contractor, DEF, is not required to be licensed under chapter 444, HRS, because its contracting activities on the federal property are not within the regulatory jurisdiction of the State. Accordingly, ABC is entitled to a deduction for the payments to DEF if DEF pays the general excise tax at the rate of four per cent on the payments received from ABC. DEF is required to be licensed as a taxpayer under chapter 237, HRS.

Example 14: ABC Construction Company, a contractor licensed under chapter 237, HRS, but unlicensed under chapter 444, HRS, is the prime contractor for the renovation of a commercial building. ABC then contracts with DEF Acoustical and Installation Construction Company, a specialty contractor licensed under chapters 237 and 444, HRS, to do part of the job. Section 237-13(3)(B), HRS, allows a prime contractor a deduction for payments to subcontractors and licensed specialty contractors. There is no requirement that the prime contractor be licensed under chapter 444, HRS. Accordingly, ABC is entitled to a deduction for the payments to DEF. DEF is subject to the general excise tax at the rate of four per cent on the payments received from ABC.

Example 15: Customer X purchases tile from ABC Retailer, a company licensed under chapter 237, HRS, but unlicensed under chapter 444, HRS. ABC then contracts with DEF Tile Contractor, a specialty contractor licensed under chapters 237 and 444, HRS, to prepare the base and install the tile. Section 237-13(3)(B), HRS, allows a prime contractor a deduction for payments to subcontractors and licensed specialty contractors. ABC, however, is not a contractor under section 237-6, HRS. Accordingly, ABC is not entitled to a deduction for the payments to DEF. DEF is subject to the general excise tax at the rate of four per cent on the payments received from ABC.

- (d) Exemption from the general excise tax of all rents and proceeds received from housing projects, including all gross proceeds received by contractors for the construction of housing projects developed pursuant to chapters 201E and 356, HRS.
- (1) Scope. This subsection sets forth the general excise tax exemption provisions of section 201E-205, HRS.
 - (2) Definitions. For the purposes of this subsection:
“Corporation” means the housing finance and development corporation established under chapter 201E, HRS.
“Housing” or “housing project” means dwelling units developed and constructed pursuant to contracts or partnership agreements executed between the corporation and eligible bidders (as defined in section 201E-213, HRS).
 - (3) Application of exemption from the general excise tax.
 - (A) Qualifying process. The following are exempted from the general excise tax under chapter 237, HRS:

- (i) All rents received on account of the lease or rental of dwelling units developed and constructed pursuant to sections 201E-211 and 201E-213, HRS, and
 - (ii) All gross proceeds received by a contractor for the development and construction of dwelling units pursuant to sections 201E-211 and 201E-213, HRS.
- (B) Non-qualifying proceeds. Gross proceeds shall not be exempt from the general excise tax where they are received by any person who furnishes tangible personal property or renders service to:
- (i) Another person who receives rental payments which are exempted from the general excise tax under this section; or
 - (ii) A contractor for the development and construction of housing or housing projects pursuant to sections 201E-211 and 201E-213, HRS.
- (4) Filing of claim; time and place. An exemption claim (FORM G-37) shall be prepared by the claimant and submitted to the corporation for certification after final execution of the partnership agreement or contract or both between such claimant and the corporation. The original copy of the certified exemption claim shall be filed with the tax assessor for the taxation district in which the claimant files the claimant's general excise tax return (FORM G-HW-1).
- (5) Failure to file claim. The exemption shall not be allowed unless the original copy of the certified exemption claim is filed with the tax assessor.
- (6) Records. A claimant shall keep at the claimant's principal place of business such records as will enable the director to verify the accuracy of the amount of exemption claimed. [Eff 2/16/82; am 12/1/88; am 2/1/89; am 7/1/90; am and ren §18-237-13-03 12/27/90] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-13)

§18-237-13-04 (Reserved)

§18-237-13-05 (Reserved)

§18-237-13-06.01 (Reserved)

HRS §237-13(6) §18-237-13-06.05 Tax on service business; fees and commissions received by a director, trustee, executor, or other fiduciary. (a) Scope. This section sets forth the application of the provisions of chapter 237, HRS, relating to the imposition of the general excise tax on fees and commissions received by a person who serves as a fiduciary such as, but not limited to, a director, trustee, executor, administrator, custodian, or guardian. The purpose of this subsection is to clarify for purposes of chapter 237, HRS, those fees and commissions derived from the performance of fiduciary services which are more than casual transactions. This subsection, therefore, does not apply to those persons who, by practice or profession, serve as fiduciaries such as attorneys and accountants who are taxed under section 237-13(8), HRS, and those persons engaged in business as fiduciary companies under the provisions of chapter 402, HRS.

(b) Imposition of tax; rate of tax. Section 237-13, HRS, levies a general excise tax against persons on account of their business and other activities in the State measured by the application of rates against gross income. Fees and commissions received by fiduciaries such as, but not limited to, directors, trustees, executors, administrators, custodians, or guardians may be taxed by section 237-13(6), (8), or (10), HRS, respectively, as follows:

- (1) Section 237-13(6), HRS, imposes a tax equal to four per cent of the gross income upon every person engaging or continuing within the State in any service business or calling.
 - (2) Section 237-13(8), HRS, imposes a tax equal to four per cent of the gross income upon every person engaging or continuing within the State in the practice of a profession.
 - (3) Section 237-13(10), HRS, imposes a tax equal to four per cent of the gross income upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not otherwise specifically included in section 237-13, HRS.
- (c) Determination as to taxable activity.
- (1) In ascertaining whether a person is engaged in the activity of a fiduciary, it is immaterial whether the appointment was solicited; whether there is a generally recognized market for the services; whether the income was necessary for the person's livelihood; whether the primary purpose was to accommodate friends; or any other subjective considerations. The activity shall be deemed to be engaged in with the object of economic gain or benefit

where the person renders the service and accepts in return therefore a normal and usual compensation for the rendition of such service.

- (2) Section 237-24(6), HRS, shall not apply to the fees or commissions received by a person who renders services in the capacity of a fiduciary.
- (3) A person is deemed to be engaged in a trade or business as a fiduciary within the meaning of chapter 237, HRS, upon the person's appointment thereto, performance of duties, and the receipt of fees if such person:
 - (A) Serves as a fiduciary in four or more of each or combination of any of the following capacities during the taxable year: director of a corporation, trustee of a trust, executor of an estate, or any other fiduciary; or
 - (B) Receives fees or commissions in an aggregate amount of more than \$1,200 in a taxable year for the performance of the person's duties as fiduciary.
- (4) Application of the principles cited in this subsection may be illustrated by the following examples:

Example 1: A, an engineer, serving as a director of two corporations, as a trustee of a trust, and as an executor of an estate during the taxable year and who received fees and commissions therefrom shall be deemed to be engaged in business within the meaning of chapter 237, HRS.

Example 2: B, a contractor, serving as a director of two corporations, one of which is a nonprofit religious corporation for which no fees were received, as a trustee of a trust, and as an executor of an estate during the taxable year and who received fees and commissions in the amount of \$1,000 per year for services as a director, trustee, and as an executor shall not be deemed to be engaged in the business within the meaning of chapter 237, HRS.

Example 3: D, a chemist, serving as a trustee of a trust and as an executor of one estate during the taxable year and who received an aggregate amount of \$1,300 therefrom, and who in addition to the foregoing, received \$500 in fees as a director of a corporation during the taxable year for directors' meetings held outside the State of Hawaii shall be deemed to be engaged in business within the meaning of chapter 237, HRS.

Example 4: F, a lawyer and an accountant, is not engaged in private practice but is employed by a corporation as a full-time lawyer and an accountant. Serving as a director of the abovementioned corporation and another corporation during the taxable year, F received an aggregate amount of \$1,000 therefrom in the taxable year. The directors' fees received by F shall not be deemed from engaging in business within the meaning of chapter 237, HRS, inasmuch as F's activities and fees therefrom are not within the provisions of paragraph (3)(A). [Eff 2/16/82; am 12/1/88; am 2/1/89; am 7/1/90; am and ren §18-237-13-06.05 12/27/90] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-13)

HRS §237-13(6) §18-237-13-06.11 Tax on service business; tire recapping services. (a) This section applies to the gross income derived from recapping a tire belonging to another person.

(b) When recapping services are rendered upon the order of or at the request of another taxpayer who is engaged in the service business and who in fact acts or acts in the nature of an intermediary between the person rendering such services and the ultimate recipient of the benefits of services:

- (1) The gross income of the recapper takes the rate of one-half of one per cent;
- (2) The gross income of the intermediary takes the rate of four per cent.

(c) When recapping services are rendered upon the order or request of another person who is not an intermediary within the meaning of subsection (b), the gross income of the recapper takes the rate of four per cent.

Example 1: A customer takes a tire to service station operator (taxpayer S) for recapping. Taxpayer S in turn has the tire recapped by taxpayer R. Taxpayer R (tire recapper) is subject to a general excise tax of one-half of one per cent on the amount received from taxpayer S for the recapping services rendered. Taxpayer S is subject to the general excise tax of four per cent on the amount received from the customer.

Example 2: A customer takes a tire to the tire recapper (taxpayer R) for recapping. Taxpayer R is subject to the general excise tax rate of four per cent on the amount received from the

customer for the recapping services rendered. [Eff 2/16/82; am 12/1/88; am 2/1/89; am 7/1/90; am and ren §18-237-13-06.11 12/27/90] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-13)

HRS §237-13(6) §18-237-13-06.16 **Tax on service business; telecommunication services.** (a) Scope. This section is intended to provide uniform rules of administrative procedure to govern the taxation of the telecommunication industry pursuant to section 237-13(6), HRS, of the general excise tax law. This section shall not apply to gross income that is taxable under chapter 239, HRS, the public service company tax law.

(b) Definitions. As used in this section, unless the context otherwise requires:

“Directly related to Hawaii” means geographically located within Hawaii or allocated to Hawaii according to generally accepted accounting principles and practices.

“Foreign common carrier” means any person operating under the legal jurisdiction of a country other than the United States which provides telecommunication service to the public in general or to specified classes of the public.

“Gross income” means the gross receipts, as defined in section 237-3, HRS, of a long distance carrier.

“Hawaii billed income” means the gross income received or accrued by a long distance carrier from telecommunication service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State.

“Interexchange carrier” means any person which provides telecommunication service between local access transport areas.

“Interstate telecommunications” means all telecommunications that either originate or terminate outside of this State.

“Intrastate telecommunications” means all telecommunications that originate and terminate within this State.

“Local access transport area” means any local intrastate calling area.

“Long distance carrier” means any interexchange carrier, reseller, or foreign common carrier which purchases, installs, rents, or leases a telephone system, telecommunication system, or telecommunications service for the interexchange carrier, reseller, or foreign common carrier’s own use to provide the interexchange carrier, reseller, or foreign common carrier or other persons with telephonic interstate or international telecommunication service which is wholly or partially independent of any local exchange system or any intrastate or interstate interexchange network or which is a substitute for any dedicated facility by which an interexchange or foreign common carrier provides a telephonic communication path in the State.

“Reseller” means any person which provides telecommunication service through the use of facilities or services owned or provided by another telecommunication service provider.

“Telecommunication service” means the transmission, conveyance, routing, or reception of any electronic, electromagnetic interactive transmission, or any other kind of energy force variations of information in any form, including but not limited to voice, image, data, or printed copy signal by means of wires, cables, radio waves, laser microwaves, satellites, fiber optics, any combination of these media, or any other method now in existence or that may be devised.

(c) Application.

(1) This section shall apply to all long distance carriers conducting business, by providing telecommunication service, in the State.

(2) The income of a long distance carrier that is subject to tax is that portion of gross income received by any long distance carrier from telecommunication service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State.

(3) Apportionment. Under the Constitution and laws of the United States, the entire gross income as determined in paragraph (2) cannot be included in the measure of tax; such gross income shall be apportioned by using the apportionment formula in subsection (e)(1).

(d) Apportionment factor.

(1) The apportionment factor shall be as follows:

$$\frac{\text{HCOP}}{\text{NHOA} + \text{NHTA} + \text{HCOP} + \left[\frac{\text{HBI}}{\text{NBI}} \times \text{NCOP} \right]}$$

HBI = Hawaii Billed Income originating or terminating in the State and charged to a telephone number, customer, or account in the State.

HCOP = Hawaii Cost of Operations includes those costs charged, under a long distance carrier's normal method of accounting, to the following tax return and Federal Communication Commission-prescribed account titles or their equivalents, which are directly related to Hawaii.

- Cost of Operations
- Contributions
- Bad Debts
- Operating Expenses
- Hawaii Originating or Terminating Connection Expenses or Access Fees or Costs
- General and Administrative Expenses
- Advertising Expenses
- Leases
- Payroll
- Maintenance, including repair to:
 - Cables
 - Central Office Equipment
 - Buildings and Grounds
 - Maintenance of Transmission Power
 - Other Maintenance Expenses
- Depreciation and Amortization Expenses
- Traffic Expenses
- Commercial Expenses other than advertising
- General Office Salaries and Expenses other than general and administrative expenses and payroll
- Insurance
- Accidents and Damages
- Operating Rents
- Relief and Pensions
- Operating Taxes
- Miscellaneous Deductions From Income

NBI = Nationwide Billed Income received from providing telecommunication service.

NCOP = Nationwide Cost of Operations includes the tax return and Federal Communication Commission-prescribed account titles or equivalents described by HCOP above. NCOP specifically excludes costs included in HCOP, NHOA, NHTA, and connection expenses or access fees not included in HCOP, NHOA, or NHTA.

NHOA = Non-Hawaii Originating Access Cost relating to HBI, which may be

- (1) The actual non-Hawaii originating access cost relating to a specific call resulting in Hawaii billed income; or
- (2) A reasonable estimate derived by using the nationwide or average Hawaii trunk access cost per unit to originate calls multiplied by the number of calls terminating in Hawaii resulting in Hawaii billed income; or
- (3) A reasonable estimate using the proportional relationship of the Hawaii originating and terminating access costs to derive the non-Hawaii originating access costs as a proportion of the total Hawaii terminating access costs.

NHTA = Non-Hawaii Terminating Access Cost relating to HBI, which may be

- (1) The actual non-Hawaii terminating access cost relating to a specific call resulting in Hawaii billed income; or
- (2) A reasonable estimate derived by using the nationwide or average Hawaii trunk access cost per unit to terminate calls multiplied by the number of calls originating in Hawaii resulting in Hawaii billed income; or
- (3) A reasonable estimate using the proportional relationship of the Hawaii originating and terminating access costs to derive the non-Hawaii terminating access costs as a proportion of the total Hawaii originating access costs.

Example: ABC Long Distance does not have figures for access costs for specific phone calls and decides it can reasonably estimate its non-Hawaii terminating access costs on a per unit basis as allowed by (2). For ABC Long Distance, the originating access cost is \$.80 and the terminating access cost is \$1.00 through the local exchange in Hawaii or on a nationwide basis for each call. If ABC Long Distance customers place 200,000 outgoing calls and receive 100,000 incoming calls during the reporting period, the NHTA would be estimated to be (200,000 X \$1.00) \$200,000 and the NHOA as (100,000 X \$.80) \$80,000.

Example: XYZ Long Distance decides to make its estimate for non-Hawaii terminating access costs on a proportional basis as allowed by (3). Assume the same cost relationship for Hawaii-located originating and terminating access costs exists for XYZ as in the above example. Therefore, if it costs \$1.00 to terminate a call in Hawaii and \$.80 to originate a call, the originating access cost is equivalent to eighty per cent of the terminating access cost. If XYZ Long Distance incurs \$4,000,000 in originating access costs and \$1,000,000 in terminating access costs in Hawaii, then XYZ Long Distance’s non-Hawaii terminating access costs may be calculated as follows:

$$\frac{\$4.0M}{.8} = \$5.0M$$

XYZ Long Distance’s non-Hawaii originating access costs may be calculated as follows:

$$\$1.0M \times .8 = \$.8M \text{ or } \$800,000$$

- (2) The apportionment factor shall be multiplied by the Hawaii billed income of each long distance carrier to determine the portion of gross income subject to tax.
 - (3) The apportionment factor shall be uniformly applied to the Hawaii billed income of all long distance carriers conducting business within and outside of the State.
 - (4) The director may periodically review, evaluate, and adjust the apportionment factor to reflect any changes in the industry as necessary.
- (e) Apportionment formula.
- (1) The apportionment formula shall be as follows:

$$\frac{HCOP}{NHOA + NHTA + HCOP + \left[\frac{HBI}{NBI} \times NCOP \right]} \times HBI = AHGI$$

AHGI = Apportioned Hawaii Gross Income received from providing telecommunication service in the State.

All other components are as described in subsection (d)(1).

Example: Aloha Communications, a local long distance carrier with no portion of its operations located out-of-Hawaii, provides long distance telephone service exclusively to customers in Hawaii. The billings total for all long distance telephone calls that originate or terminate in Hawaii and which are billed to a customer, telephone number, or account in Hawaii is \$10,000,000. Aloha’s nationwide billings total is also \$10,000,000 as all of its billings are made to Hawaii customers. The Hawaii cost of operations amount to \$7,000,000. The nationwide cost of operations, which excludes the Hawaii cost of operations, is zero. The non-Hawaii originating access costs related to the Hawaii-billed calls income is \$150,000. The non-Hawaii terminating access costs relating to Hawaii-billed calls is \$1,500,000.

The gross income received from telephone calls originating or terminating in Hawaii and billed to a customer, number, or account in Hawaii is apportioned as follows:

$$\frac{\$7M}{\$1.5M + \$1.5M + \$7M + \left[\frac{(\$10M)}{(\$10M)} \times 0 \right]} \times \$10M = \$8,092,485.55$$

The factor set out in subsection (d)(1) multiplied by the long distance carrier's Hawaii billed calls income of \$10,000,000, equals the amount of gross income that is subject to tax, in this instance, \$8,092,485.55.

Example: ABC Long Distance Company, an out-of-state long distance carrier that sells long distance telephone services to nationwide customers, has a branch office located in Hawaii which provides long distance telephone services in conjunction with its out-of-state offices. The amount of the Hawaii billed calls income is \$100,000,000. The Hawaii cost of operations is \$70,000,000. The nationwide billed income is \$8,000,000,000. The nationwide cost of operations, excluding the Hawaii cost of operations, Hawaii-related originating and terminating access costs, and non-Hawaii-related access cost, is \$3,000,000,000. The non-Hawaii originating access cost relating to Hawaii billed calls income is \$1,500,000. The non-Hawaii terminating access cost relating to Hawaii billed calls income is \$15,000,000.

The gross income received from telephone calls originating or terminating in Hawaii and billed to a customer, number, or account in Hawaii is apportioned as follows:

$$\frac{\$70M}{\$1.5M + \$15M + \$70M + \left[\frac{(\$100M)}{(\$8B)} \times \$3B \right]} \times \$100,000,000 = \$56,451,612.90$$

The factor set out in subsection (d)(1), multiplied by the long distance carrier's Hawaii billed calls income of \$100,000,000, equals the amount of gross income that is subject to tax, in this instance, \$56,451,612.90.

- (2) The apportionment formula shall be uniformly applied to the gross income received or accrued from telecommunication service by all long distance carriers conducting business within and outside of the State.
 - (3) The director may periodically review, evaluate, and adjust the apportionment formula to reflect any changes in the industry as necessary.
- (f) Industry apportionment factor.
- (1) On or before February 15 or August 15 of each year, each long distance carrier shall calculate its apportionment factor and apportioned Hawaii gross income based upon the long distance carrier's Hawaii billed income and costs of the preceding twelve months (January 1 through December 31 or July 1 through June 30, respectively) and shall submit to the department a report for the applicable reporting period ending on December 31 or June 30. The report shall include the long distance carrier's formula, the resulting apportionment factor, and any supporting information, worksheets, or other documentation as may be required by the director. The department may review the calculation of each apportionment factor for reasonable compliance with subsection (d) and may make any necessary adjustments to the factor.
 - (2) The department may calculate an industry apportionment factor for uniform application to the Hawaii billed income of each long distance carrier providing telecommunication service in Hawaii, based upon not less than ninety per cent of the total Hawaii billed income received by all long distance carriers doing business in the State for any reporting period, by weighting the apportionment factors submitted in accordance with paragraph (1) in proportion to the long distance carriers' shares of the total Hawaii billed income received by all long distance carriers doing business in the State for the period. Any adjustment to the industry apportionment factor shall be made by amending this rule and shall be effective on the July 1 or January 1 following the reporting periods set forth in paragraph (1).
 - (3) Each long distance carrier shall multiply the industry apportionment factor by the long distance carrier's Hawaii billed income to determine the portion of the long distance carrier's gross income subject to tax.
 - (4) If the department does not receive sufficient information as required under paragraph (1) during any reporting period to enable the department to calculate an industry apportionment factor, or if the department's calculation of a industry apportionment factor is challenged by the filing of a tax return with payment under protest or the filing of a civil complaint in any court of competent jurisdiction by a long distance carrier whose proportion of the total Hawaii billed income is not less than five per cent, or if the application of an industry apportionment factor is determined to be unauthorized under the constitution or laws of

this State or the United States, the director may suspend the application of the industry apportionment factor, and each long distance carrier shall apply the apportionment factor calculated in accordance with subsection (d) to the long distance carrier's Hawaii billed income. If a determination to suspend is made, the director shall publish, not less than twenty days prior to the date on which use of the industry apportionment factor shall be suspended, notice of the suspension of the use of the industry apportionment factor at least once in a newspaper of general circulation in the State and at least once in a financial newspaper of general circulation in the United States. On the first day of the month following the publication of the notice of suspension, use of the industry apportionment factor shall cease and long distance carriers shall revert to use of the apportionment factor calculated in accordance with subsection (d).

Example: In January, 1989, Alpha, Beta, and Delta, three long distance carriers, submit to the department the following Hawaii-billed incomes and individual apportionment factors for the previous twelve-month period ending on December 31, 1988:

| | TWELVE MONTH HAWAII-BILLED INCOME | INDIVIDUAL APPORTIONMENT FACTOR |
|-------|-----------------------------------------|---------------------------------------|
| Alpha | \$ 50 Million | .60 |
| Beta | \$ 75 Million | .50 |
| Delta | \$ 25 Million | .75 |
| TOTAL | \$150 Million | |

Thereafter, the department determines the industry apportionment factor by using a proportionate representation based on each long distance carrier's share of the total Hawaii-billed income as follows:

Alpha $\$50 / 150 \times .60 = .200$

Beta $\$75 / 150 \times .50 = .250$

Delta $\$25 / 150 \times .75 = .125$

The industry apportionment factor equals (.200 + .250 + .125) or .575 or 57.5%.

Thus, beginning on July 1, 1989, the apportioned Hawaii gross income (AHGI) of each long distance carrier will be set at 57.5 per cent of the long distance carrier's Hawaii-billed income (until the industry apportionment factor is changed effective the next January 1). For example, the tax due for the month of July may be calculated as follows:

Alpha

| | |
|-------------------------------|-----------|
| Hawaii Billed Income | \$ 5.0 M |
| Industry Apportionment Factor | .575 |
| Apportioned Hawaii Income | \$2.875 M |
| Tax Rate | 4% |
| Tax Due | \$115,000 |

Beta

| | |
|-------------------------------|-----------|
| Hawaii Billed Income | \$ 7.5M |
| Industry Apportionment Factor | .575 |
| Apportioned Hawaii Income | \$4.3125M |
| Tax Rate | 4% |
| Tax Due | \$172,500 |

| | |
|-------------------------------|-----------|
| <u>Delta</u> | |
| Hawaii Billed Income | \$ 2.5M |
| Industry Apportionment Factor | .575 |
| Apportioned Hawaii Income | \$1.4375M |
| Tax Rate | 4% |
| Tax Due | \$ 57,500 |

In this example, if Alpha, Beta, or Delta had failed to furnish the department with the data required to determine an industry apportionment factor, the ninety per cent requirement would not have been met, and long distance carriers would not be able to use an industry apportionment factor. Each long distance carrier would be required instead to use an apportionment factor calculated under subsection (d) to determine the portion of its Hawaii-billed income subject to the general excise tax.

- (5) Beginning on January 1, 1993, the industry apportionment factor shall be 0.4786.
- (g) Unfair competition; billing.
- (1) No long distance carrier shall advertise or hold out to the public in any manner, directly or indirectly, that the tax hereby imposed upon the long distance carrier is not considered as an element in the price to the purchaser.
- (2) A separately stated tax on any billing to a customer, number, or account reflecting the tax imposed on gross income under this paragraph shall be designated: "4.00% STATE TAX - HAWAII INCOME". [Eff 2/16/82; am 12/1/88; am 2/1/89; am 7/1/90; am and ren §18-237-13-06.16, 12/27/90; am 1/1/92; am 1/1/93] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-13)

§18-237-13-07 (Reserved)

HRS §237-13(6) §18-237-13-08 **Professions.** Fees and commissions received by a director, trustee, executor, or other such fiduciary. See section 18-237-13-06.05. [Eff 2/16/82; am 12/1/88; am 2/1/89; am 7/1/90; am and ren §18-237-13-08 12/27/90] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-13)

§18-237-13-09 (Reserved)

HRS §237-13(9) §18-237-13-10 **Tax on other business.** (a) The furnishing or use of trading stamps and similar devices.

- (1) General excise tax, rates applicable, amounts. A person, hereinafter called the "user of stamps or other devices," who uses in, with, or for any transaction, stamps, coupons, tickets, certificates, cards, or other similar devices, redeemable in goods, wares, or merchandise, or which entitle the customer to procure from any person any goods, wares, or merchandise, free of charge, or for less than the retail market price thereof, is taxable upon the full amount of gross proceeds of sale or gross income of the transaction in, with, or for which the stamps or other devices are used, at the rates provided by chapter 237, HRS, without any deduction therefrom on account of the cost of the stamps or other devices.
- (2) Stamp company, tax applicable to. The person who furnishes to the user of the stamps or other devices, or redeems, such stamps, coupons, tickets, certificates, cards, or other similar devices, is taxable upon the gross income received or derived therefrom at the rate provided by section 237-13(10), HRS.
- (3) Prize, no tax applies, when; transfer of merchandise to person awarding prize.
- (A) As to the goods, wares, or merchandise which constitute the prize for or redemption value of the stamps or similar devices, no tax applies in respect of the transfer of such goods, wares, or merchandise to the person surrendering the stamps or similar devices for redemption or who receives the prize, except to the extent of the additional consideration, if any, received or derived therefrom when the goods, wares, or merchandise are transferred for a price other than the stamps or devices themselves.
- (B) As to the transfer of such goods, wares, or merchandise to the person giving the prize or redeeming the stamps or similar devices, this shall be deemed a sale at wholesale.

(b) Fees and commissions received by a director, trustee, executor, or other such fiduciary. See section 18-237-13-06.05.

(c) Containers and packaging materials. See section 18-237-4(b).

(d) Gross income received or derived from recapping tires or from selling tangible personal property for use in recapping tires. See section 18-237-13-02(a). [Eff 2/16/82; am 12/1/88; am 2/1/89; am 7/1/90; am and ren §18-237-13-10 12/27/90] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-13)

HRS §237-13(6) § 18-237-13(6)-01 One-half per cent intermediary services rate, in general. (a) Section 237-13(6), HRS, provides that where any person engaging or continuing within the State in any service business or calling not otherwise specifically taxed under chapter 237 renders such services upon 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 such services and the ultimate recipient of the benefits of such services, so much of the gross income as is received by the person rendering the services shall be subject to 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 subject to tax at the rate of four per cent.

(b) This provision has been interpreted very strictly by the courts in all three reported cases addressing this issue. In re Tax Appeal Busk Enter., 53 Haw. 518 (1972); In re Tax Appeal Pacific Laundry, T.A. No. 1864, affirmed 65 Haw. 678 (1982); and In re Tax Appeal McDonald's Restaurants, T.A. No. 2232 (1985). The Department has been guided by these cases in applying the intermediary services rate and drafting these rules. These cases require a "clear analogue to the wholesaler-retailer-customer transaction of goods" and the intermediary must be a "mere conduit." While few states tax services as extensively as Hawaii does, the Department has searched the statutes, rules, and case law of other states for legal tests relating to the resale of property or services, the wholesale sale of property or services, the consumption or use of property or services, and the recipient of property or services. The authorities that discuss services use the same terms that are used in the area of property - use, consumption, recipient, resale. Others reach a conclusion without articulating a clear reason for the conclusion, e.g., the "primary objective" of the parties was to resell the service. This may be attributable to the ephemeral nature of a service, as opposed to the sale of property which can be tracked at each level of sale. [Eff 1/22/99](Auth: HRS §§231-3(9), 237-8)(Imp: HRS §237-13)

HRS §237-13(6) § 18-237-13(6)-02 Summary of the rules. The intermediary services rate of one-half per cent is applicable to the gross income received or derived when:

- (1) A service business provides services ("Service Provider");
- (2) Upon the request or order of another service business which acts as an "Intermediary" between the Service Provider and the ultimate recipient of the services ("Customer");
- (3) Both Service Provider and Intermediary are licensed persons in this State;
- (4) There are at least three parties (Service Provider, Intermediary, and Customer); and
- (5) The gross income received from Customer by Intermediary is subject to the general excise tax at the four per cent rate on all the gross income received for or derived from those services. [Eff 1/22/99](Auth: HRS §§231-3(9), 237-8)(Imp: HRS §237-13)

HRS §237-13(6) § 18-237-13(6)-03 Definitions; generally. For purposes of sections 18-237-13(6)-01 to 18-237-13(6)-09:

"Customer" means the person who is the ultimate recipient of the services of Service Provider. The term "Customer" is used regardless of whether the payment received by Service Provider qualifies for the intermediary services rate.

"Intermediary" is defined in section 18-237-13(6)-06. The term "Intermediary" is used regardless of whether the payment received by Service Provider qualifies for the intermediary services rate.

"Service Provider" means the taxpayer claiming the one-half per cent intermediary services rate who provides the services to Customer. The term "Service Provider" is used regardless of whether the payment received qualifies for the intermediary services rate. [Eff 1/22/99] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-13)

HRS §237-13(6) § 18-237-13(6)-04 "Service business," defined. (a) "Service business" means a person who engages in a service business or calling, as defined in section 237-7, HRS. A service business or calling is defined in section 237-7, HRS, as "all activities engaged in for other persons for a consideration which involve the rendering of a service as distinguished from the sale of tangible property or the production and sale of tangible property."

Example 1: Intermediary, a photographic studio, contracts with Customers to provide photographic services at Customers' wedding in Hawaii. Intermediary contracts with Service Provider, another photographic studio, to provide the photographic services at the wedding. Service Provider provides the photographic services at the wedding and bills Intermediary. Intermediary bills Customers. Customers pay Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, both Service Provider and Intermediary must be engaged in service businesses. Both Service Provider and Intermediary are engaged in service businesses because photography is a service business or calling as defined in section 237-7, HRS.

Example 2: Intermediary, a corporation organized to render professional medical services, contracts to provide medical services to Customers (Intermediary's patients). Intermediary contracts with Service Providers to provide the medical services. Service Providers provide the medical services and bill Intermediary. Intermediary bills Customers. Customers pay Intermediary and Intermediary pays Service Providers.

In order for Service Providers to be eligible for the intermediary services rate, both Service Providers and Intermediary must be engaged in service businesses. Both Service Providers and Intermediary are engaged in service businesses because professional medical services is a service business or calling as defined in section 237-7, HRS.

(b) "Service business" does not include a person who is not engaged in a service business or calling as defined in section 237-7, HRS.

- (1) "Service business" does not include a person subject to tax under section 237-13(3), HRS, relating to the taxation of contracting.

Example 3: Intermediary, a general contractor, enters into a contract with Customer to construct a building. Intermediary subcontracts with Service Provider, a solar company, to install solar heating and another Service Provider, an electrician, to install the wiring in the building. Both Service Providers bill Intermediary and Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Providers.

In order for Service Providers to be eligible for the intermediary services rate, both Service Providers and Intermediary must be engaged in service businesses. Service Providers and Intermediary are not engaged in a service business because they are engaged in contracting activities subject to tax under section 237-13(3), HRS. The intermediary services rate is not applicable to the payments that Service Providers receive from Intermediary. Service Providers are subject to the general excise tax at the rate of four per cent on the payments received from Intermediary. Intermediary may be allowed a subcontract deduction for the payments to Service Providers if Intermediary fulfills the requirements of section 237-13(3) (B), HRS.

- (2) "Service business" does not include a person subject to tax under section 237-(13)(5), HRS, relating to the taxation of a sales representative receiving commissions.

Example 4: Intermediary, a manufacturer's sales representative, receives commissions from Customer, a manufacturer, for sales of goods. Intermediary contracts with Service Provider, another sales representative, to assist Intermediary in selling the goods. Customer pays Intermediary commissions and Intermediary pays the commissions to Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, both Service Provider and Intermediary must be engaged in service businesses. Both Service Provider and Intermediary are not engaged in service businesses because they are sales representatives and their commission income is subject to tax under section 237-13(5), HRS. The intermediary services rate is not applicable to the payment that Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent on the payment received from Intermediary.

- (3) "Service business" does not include a person subject to tax under section 237-13(10), HRS, relating to the taxation of other business, such as a licensing business.

Example 5: Intermediary, through licensing agreements, franchises fast-food restaurants in Hawaii to Customers. The licensing agreements provide that Customers shall have the right, license, and privilege to use Intermediary's system at restaurants and that Intermediary shall provide management services. Intermediary and Service Provider

enter into an agreement which specifies that Service Provider will provide the management services to Customers. Service Provider bills Intermediary and Intermediary bills Customers. Customers pay Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, both Service Provider and Intermediary must be engaged in service businesses. Intermediary is not a service business because Intermediary is engaged in a licensing business subject to tax as other business under section 237-13(10), HRS. The intermediary services rate is not applicable to the payment that Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent on the payment received from Intermediary.

- (4) Service business” does not include a person subject to tax under section 237-13(10), HRS, relating to the taxation of other business, such as rental activity.

Example 6: Intermediary enters into an agreement with Customer to rent Intermediary’s ballroom. Intermediary then contracts with Service Provider, an audio visual company, to provide the audio visual services required by Customer. Service Provider bills Intermediary and Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, both Service Provider and Intermediary must be engaged in service businesses. Intermediary is not engaged in a service business because Intermediary is engaged in a rental business subject to tax under section 237-13(10), HRS. The intermediary services rate is not applicable to the payment that Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent on the payment received from Intermediary.

- (5) “Service business” does not include a person subject to tax under chapter 239, HRS, relating to the public service company tax.

Example 7: Intermediary, a moving and storage company licensed by the Public Utilities Commission, enters into an agreement with Customer to transport goods. To complete the job, Intermediary obtains laborers through Service Provider, an employee leasing company. Service Provider bills Intermediary and Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, both Service Provider and Intermediary must be engaged in service businesses. Service Provider is a service business. Intermediary, however, is not a service business because Intermediary is engaged in a public service company business subject to the public service company tax under chapter 239, HRS. The intermediary services rate is not applicable to the payments that Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent on the total payments received from Intermediary. [Eff 1/22/99](Auth: HRS §§231-3(9), 237-8)(Imp: HRS §237-13)

HRS §237-13(6) § 18-237-13(6)-05 “Licensed person in this State, defined.” (a) “Licensed person in this State” means a person subject to the taxing jurisdiction of the State and licensed under chapter 237, HRS;

(b) “Licensed person in this State” does not include a person who is not subject to the taxing jurisdiction of the State.

Example 1: Intermediary, a consulting company located in California, enters into an agreement with Customer. Intermediary contracts with Service Provider, located in Hawaii, to perform services in Hawaii for Customer. Intermediary, however, does not perform any services in Hawaii. Service Provider bills Intermediary and Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, both Service Provider and Intermediary must be licensed persons in this State. Intermediary, however, is not a licensed person in this State because Intermediary is not subject

to the taxing jurisdiction of the State. The intermediary services rate is not applicable to the payment Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent on the total payments received from Intermediary. [Eff 1/22/99](Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-13)

HRS §237-13(6) § 18-237-13(6)-06 “Intermediary” between Service Provider and Customer. In order for Service Provider to be eligible for the intermediary services rate, the person requesting or ordering the service from Service Provider must act as or act in the nature of an Intermediary between Service Provider and the ultimate recipient of the benefits of such services (Customer). The person requesting or ordering the service from the Service Provider acts as or acts in the nature of an Intermediary when there is a direct flow of services from Service Provider through Intermediary (or Intermediaries) and then to Customer. As a mere conduit for the services en route to Customer, Intermediary does not alter, use, or otherwise consume the services provided by Service Provider. Service Provider’s services are altered, used or consumed if the services constitute a portion of the total services performed by Intermediary for Customer, or Service Provider’s services are incorporated into services performed by other persons for Customer.

Example 1: Intermediary provides salon services. Customer requests a facial. Intermediary contracts with Service Provider to provide Customer with the facial. Service Provider bills Intermediary. Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be a direct flow of services from Service Provider to Customer, the ultimate recipient of the benefits. There is a direct flow of services because the total services requested by Customer were performed by Service Provider; Service Provider’s services were not incorporated in other services performed for Customer.

Example 2: Intermediary is a magician. Customer requests the performance of Intermediary. Intermediary contracts with Service Provider, another magician, to perform for Customer. Service Provider bills Intermediary. Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be a direct flow of services from Service Provider to Customer, the ultimate recipient of the benefits. There is a direct flow of services because the total services requested by Customer were performed by Service Provider; Service Provider’s services were not incorporated in other services performed for Customer.

However, if Intermediary contracted to put on a gala event which includes a piano performance by Service Provider, there would not be a direct flow of services because Service Provider’s services would be incorporated in other services performed for Customer. Service Provider would be subject to the general excise tax at the rate of four per cent.

Example 3: Intermediary, an automobile dealer, sells an automobile to Customer. Intermediary contracts with Service Provider to perform cleaning, repairing, and restoring services on the automobile. Service Provider bills Intermediary. Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be a direct flow of services from Service Provider to Customer, the ultimate recipient of the benefits. There is no direct flow of services from Service Provider to Customer because the total services requested by Customer were not performed by Service Provider; rather, Service Provider’s services were incorporated as part of the sale of the automobile to Customer. Moreover, Intermediary, is engaged in the sale of goods (automobiles), rather than a service business. The intermediary services rate of one-half per cent is not applicable to the payment Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent.

Example 4: Intermediary, a graphic design firm, contracts with Customer to develop an advertisement. Intermediary contracts with Service Provider to provide illustrations. Service Provider bills Intermediary. Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be a direct flow of services from Service Provider to Customer, the ultimate recipient of the benefits, or another person who acts as or acts in the nature of an Intermediary. There is no direct flow of services from Service Provider to Customer because the total services requested by Customer were not performed by Service Provider; rather, Service Provider’s services were incorporated in the advertisement with other services performed for Customer. The intermediary services rate of one-half per cent is not applicable to the

payment Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent.

Example 5: Intermediary, a management consultant, enters into a contract with Customer to study the reason for Customer's declining sales. Intermediary contracts with Service Provider, a marketing company, to do part of the study. Service Provider bills Intermediary. Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be a direct flow of services from Service Provider to Customer, the ultimate recipient of the benefits, or another person who acts as or acts in the nature of an Intermediary. There is no direct flow of services from Service Provider to Customer because the total services requested by Customer were not performed by Service Provider; rather, Service Provider's services were incorporated in the study with other services performed for Customer. The intermediary services rate of one-half per cent is not applicable to the payment Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent. [Eff 1/22/99](Auth: HRS §§231-3(9), 237-8)(Imp: HRS §237-13)

HRS §237-13(6) § 18-237-13(6)-07 Three parties required. (a) In order for Service Provider to be eligible for the intermediary services rate, there must be at least three parties - Service Provider, Intermediary, and Customer (the ultimate recipient of the services).

Example 1: Intermediary, an auto body and fender shop, enters into an agreement with Customer to paint Customer's car. Intermediary contracts with Service Provider, an auto paint shop, to paint Customer's car. Service Provider bills Intermediary and Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be at least three parties. There are three parties in this example: Service Provider, Intermediary, and Customer.

(b) There are at least three parties when there is a direct flow of services from Service Provider through Intermediary (or Intermediaries) and then to Customer, the ultimate recipient of the benefits, regardless of the number of Intermediaries. Both Service Provider and each Intermediary, except for the Intermediary providing the final services to the Customer, may qualify for the one-half per cent intermediary services rate.

Example 2: Q, a provider of parking services, contracts with Customer to provide those services at an event. Q contracts with R to provide the parking services. R then contracts with S to provide the parking services. S bills R, R bills Q, and Q bills Customer. Customer pays Q. Q pays R and R pays S.

In order for a Service Provider to be eligible for the intermediary services rate, there must be at least three parties. With respect to R's eligibility for the intermediary services rate, there are three parties: R (the Service Provider); Q (intermediary); and Customer.

With respect to S's eligibility for the intermediary services rate, there are four parties: S (the Service Provider); R (intermediary); Q (intermediary); and Customer.

(c) Service Provider is eligible for the intermediary services rate when Service Provider receives payment from a third-party payer, rather than Customer.

Example 3: Intermediary, an auto body and fender shop, enters into an agreement to paint Customer's car. Customer is insured by Insurance Company. Intermediary contracts with Service Provider, an auto paint shop, to paint Customer's car. Service Provider bills Intermediary and Intermediary bills Insurance Company. Insurance Company pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be at least three parties. Service Provider is eligible for the intermediary services rate when Intermediary receives payment from a third-party payer, rather than Customer. There are four parties: Service Provider, Intermediary, Insurance Company (the third-party payer who pays Intermediary for the services furnished to Customer), and Customer.

(d) The intermediary services rate is not applicable when there are only two parties.

- (1) There are two parties when Intermediary is an agent of Service Provider.

Example 4: Intermediaries, which are various hotels, provide laundry services to Customers, who are guests at the hotels. Service Provider is engaged in the business of providing laundry services. Intermediaries enter into agreements with Service Provider to provide those services. The agreements expressly state that Intermediaries shall be agents of Service Provider. Customers fill out laundry slips and turn over the slips along with the laundry to Intermediaries which turn them over to Service Provider. Service Provider does the laundry, returns it to Intermediaries, and bills Intermediaries for its services. Intermediaries collect from Customers and remit the amounts billed by Service Provider, retaining 35 per cent of the billing as commission. Other than for negligence of Intermediaries or its employees, Intermediaries are neither liable nor responsible to Customers for any loss or damage to Customers' laundry. All claims for losses or damages and questions regarding charges are directed to Service Provider. All uncollectible amounts are charged to Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be at least three parties. Intermediaries in this example are agents for Service Provider because they act on behalf of and subject to the control of Service Provider. Therefore, there are only two parties in this example (1) Service Provider and (2) Customers and the intermediary services rate is not applicable to the payments Service Provider receive from Intermediaries. Service Provider is subject to the general excise tax at the rate of four per cent on the total amounts billed by Intermediaries to Customers.

- (2) There are two parties when Service Provider is an agent of Intermediary.

Example 5: Intermediary, through licensing agreements, franchises fast-food restaurants in Hawaii to Customers. The licensing agreements provide that Customers shall have the right, license, and privilege to use Intermediary's system at restaurants and that Intermediary shall provide management services. Intermediary and Service Provider, a subsidiary company, enter into an agreement which specifies that Service Provider will provide the management services to Customers. Intermediary, however, is engaged in a licensing business rather than a service business. Service Provider bills Intermediary and Intermediary bills Customers.

In order for Service Provider to be eligible for the intermediary services rate, there must be at least three parties. Service Provider in this example is an agent for Intermediary because Service Provider acts on behalf of and subject to the control of Intermediary. Under the contract Customers are looking to Intermediary only to provide the services. Intermediary provides the services to Customers through Service Provider, a subsidiary company of Intermediary. Intermediary would never entrust its management system to an independent third party, especially in the highly competitive fast-food industry. Therefore, there are only two parties in this example: (1) Intermediary; and (2) Customers. The intermediary services rate is not applicable to the payment Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent on the amounts received from Intermediary.

- (3) There are two parties when Service Provider is an employee of the "intermediary."

Example 6: Intermediary, an insurance adjusting company, adjusts claims for Customer, an insurance company. Intermediary enters into a contract with Service Provider, an insurance adjuster, to adjust claims. The contract provides that Service Provider is controlled or directed by Intermediary as to the means and manner of performance, has fixed time schedules, a fixed salary or rates, and is furnished an office and supplies. Service Provider bills Intermediary, and Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be at least three parties. Service Provider in this example is an employee of Intermediary

because Service Provider acts on behalf of and subject to the control of Intermediary. See, Chapter 233, HRS, relating to Tax Classification of Certain Business Relationships. Therefore, there are only two parties in this example: (1) Intermediary and (2) Customer. The intermediary services rate is not applicable to the payments Service Provider receives from Intermediary. Service Provider's salaries and wages, however, are exempt from the general excise tax under section 237-24(6), HRS. Intermediary is subject to the general excise tax at the rate of four per cent on the total amounts received from Customer. [Eff 1/22/99](Auth: HRS §§231-3(9), 237-8)(Imp: HRS §237-13)

HRS §237-13(6) § 18-237-13(6)-08 Gross income received from Customer by Intermediary subject to general excise tax at the four per cent rate. (a) In order for Service Provider to be eligible for the intermediary services rate, the gross income received from Customer by Intermediary must be subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services.

Example 1: Intermediary, a service station, enters into an agreement with Customer to recap Customer's tires. Intermediary contracts with Service Provider to recap Customer's tires. Service Provider bills Intermediary for recapping the tires and Intermediary bills Customer. Customer pays Intermediary, which is subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services. Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, the gross income received from Customer by Intermediary must be subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services. Here, Intermediary is subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services furnished to Customer.

Example 2: Assume the same facts as in Example 20 above, except that Service Provider arranges for W to recap the tire. W bills Service Provider, Service Provider bills Intermediary, and Intermediary bills Customer. Customer pays Intermediary. Intermediary pays Service Provider and Service Provider pays W.

In order for Service Provider to be eligible for the intermediary services rate, the gross income received from Customer by Intermediary must be subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services.

W is eligible for the intermediary services rate because Intermediary is subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services furnished to Customer, notwithstanding that Service Provider also is subject to the one-half per cent intermediary services rate.

(b) Service Provider is not eligible for the intermediary services rate if there are only three parties and Intermediary is not subject to the general excise tax.

Example 3: Intermediary, a tax-exempt hospital under section 237-23(a)(6), HRS, contracts with Service Provider to provide counseling services to Customers (Intermediary's patients). Service Provider provides the counseling services and bills Intermediary. Intermediary bills the Customer's insurers. The insurers pay Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, the gross income received from Customer by Intermediary must be subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services. The gross income received from Customer is not subject to the general excise tax at the rate of four per cent because Intermediary is exempt from the general excise tax. The intermediary services rate is not applicable to the payments Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent.

(c) The Service Provider is not eligible for the intermediary services rate if income is divided between the Service Provider and another person under section 237-18, HRS.

Example 4: Intermediary, a Realtor, enters into an agreement with Customer to sell Customer's real estate. Service Provider, a licensed real estate agent with Intermediary, sells the real estate. The income received by Intermediary is divided between Intermediary and Service Provider, pursuant to section 237-18, HRS.

In order for Service Provider to be eligible for the intermediary services rate, the gross income received from Customer by Intermediary must be subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services. The gross income received from Customer is not subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services because Intermediary, pursuant to section 237-18, HRS, has split its income with Service Provider. The intermediary services rate is not applicable to the payment Service Provider receives. Service Provider is subject to the general excise tax at the rate of four per cent on Service Provider's share of the income. [Eff 1/22/99](Auth: HRS §§231-3(9), 237-8)(Imp: HRS §237-13)

HRS §237-13(6) § 18-237-13(6)-09 Burden of proof on Service Provider. (a) Service Provider has the burden of providing evidence satisfactory to the Department that Service Provider qualifies for the intermediary services rate of one-half per cent. Whether Service Provider qualifies for the intermediary services rate is determined by all the factual circumstances; no single factor is controlling.

(b) Some of the relevant factors include the following:

- (1) Whether there is a written contract identifying the customer for whom Intermediary is purchasing Service Provider's services, the services performed by the Intermediary for Customer, and the services performed by Service Provider at the request of Intermediary;
- (2) Whether there has been a separate charge or bill by Intermediary for Service Provider's services; and
- (3) Whether Intermediary has executed a certificate on a form prescribed by the Department that states that Intermediary will not alter, use, or otherwise consume Service Provider's services. Intermediary may execute a certificate which is applicable to every purchase of services from Service Provider, unless it is specified in writing that the certificate does not apply or until the certificate is revoked by notice in writing.

Example 1: Intermediary provides salon services. Customer requests hair styling services. Intermediary contracts with Service Provider to provide Customer with the hair styling; a written contract identifies Customer and the services performed by Service Provider. Intermediary executes the certificate that states that Intermediary will not alter, use, or otherwise consume Service Provider's services. Service Provider bills Intermediary. Intermediary bills Customer and includes a separate charge for the services of Service Provider. Intermediary is subject to the general excise tax at the four per cent rate. Customer pays Intermediary and Intermediary pays Service Provider.

Service Provider has the burden of providing evidence satisfactory to the Department that Service Provider qualifies for the intermediary services rate of one-half per cent. The written contract identifying Customer and the services performed by Service Provider, the separate billing by Intermediary, and the executed certificate are among the relevant factors that the Department will consider in determining whether Service Provider qualifies for the intermediary services rate. [Eff 1/22/99](Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-13)

§18-237-14 to §18-237-15 (Reserved)

HRS §237-16 §18-237-16 Tax on certain retailing. (a) Gross income received or derived from recapping tires or from selling tangible personal property for use in recapping tires. See Administrative Rules §18-237-13(B)(1).

(b) Furnishing or use of trading stamps and similar devices. See Administrative Rules §18-237-13(j).

(c) Containers and packaging materials. See Administrative Rules §18-237-4(b). [Eff 2/16/82] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-16)

HRS §237-16.5 §18-237-16.5-01 Definitions. For purposes of sections 18-237-16.5-02 to 18-237-16.5-07, unless the context otherwise requires:

“Lease” means the rental of real property under an instrument in writing by which one conveys real property for a specified term and for a specified consideration, and includes the written extension or renegotiation of a lease, and any holdover tenancy.

“Lessee” means one who holds real property under a lease, and includes a sublessee. A lessee or sublessee includes a sublessor subject to both the tax and applicable deduction under section 237-16.5, HRS, provided real property or space is conveyed by a sublease.

“Lessor” means one who conveys real property by a lease, and includes a sublessor. A lessor does not include a person who is not subject to the taxes imposed by chapter 237, HRS, or a person whose gross proceeds or gross income from leasing the real property or space is not taxable under chapter 237, HRS.

Example 1: L leases unimproved Hawaii real property X to A. A then subleases real property X and A's improvements (e.g., Building Y) to B. Finally, B subleases real property X and Building Y to C. Assume that L, A and B are taxable under chapter 237, HRS, on their respective rental income from real property X and Building Y. L, A, and B are lessors. A, B, and C are lessees.

“Personal services” means services that are unrelated to the “operation of the property” (as the term is defined in section 514A-3, HRS) such as secretarial services, messenger services, and receptionist services because the services directly benefit the lessee's real property or space rather than the common elements of the real property or space.

“Real property or space” means the area actually rented and used by the Lessee, including common elements as defined in section 514A-3, HRS. Real property or space does not include the use of tangible personal property or the bundling of “personal services,” or both; such items instead being subject to tax on other business as provided in section 237-13(10), HRS. If a sublease does not specifically include the use of tangible personal property or the receipt of personal services, it is presumed that the sublessor is subject to the tax and is allowed the sublease deduction under section 237-16.5, HRS. If it is determined that the real property or space includes tangible personal property or the bundling of personal services or both, the real property or space shall instead be subject to tax on other business under section 237-13(10), HRS, unless the sublessor complies with section 18-237-16.5-07 by providing proof satisfactory to the department of taxation of the portion subject to the tax and sublease deduction under section 237-16.5, HRS.

Example 2: Assume the same facts as Example 1 above except that sublessor B subleases real property X and Building Y to C and the written sublease to C does not specifically include the use of tangible personal property by C or the receipt of personal services by C. B is presumed to be subject to tax under section 237-16.5, HRS, and qualifies for the sublease deduction. If the department of taxation; however, later determines that the “sublease” includes the use of tangible personal property or receipt of personal services or both, all of B's income will be subject to tax on other business under section 237-13(10), HRS, unless B complies with section 18-237-16.5-07 by providing proof satisfactory to the department of taxation of the portion which is subject to tax under section 237-16.5, HRS, and qualifies for the sublease deduction. The remaining portion of the gross income attributable to tangible personal property, personal services, or both shall be subject to tax on other business under 237-13(10), HRS.

“Sublease” includes the rental of real property which is held under a lease and is made in a written document by which one conveys real property for a specified term and for a specified consideration. A sublease includes the written extension or renegotiation of a sublease, any holdover tenancy under the written sublease, multiple subleases of portions of the real property, and any number of successive subleases of the same real property or portions thereof.

“Sublessee” means one who holds real property under a sublease.

“Sublessor” means one who conveys real property by sublease under a lease. A sublessor includes a lessee subject to both the tax and applicable deduction as determined under section 237-16.5, HRS, provided a sublease is conveyed. [Eff 10/01/98] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-16.5)

HRS §237-16.5 §18-237-16.5-02 Tax on written real property leases; deduction allowed. (a) Section 237-16.5, HRS, imposes the general excise tax at the rate of four per cent upon the gross proceeds or gross income received or derived from the business of leasing real property in the State. A Lessee who subleases real property under a sublease shall be allowed a deduction from the amount of gross proceeds or gross income received from the Sublessee under section 237-16.5, HRS, and sections 18-237-16.5-03 to 18-237-16.5-06. In no case shall the amount of the deduction exceed the total amount received from the sublease of the real property.

Example 3: Lessor L leases its building to lessee A, who does not sublease the building or any portion of the building. A is subject to the tax under section 237-16.5, HRS, but is not allowed the sublease deduction because there is no sublease.

- (b) The requirements for the sublease deduction are as follows:
- (1) The Lessor must submit to the Lessee, a certificate that certifies that the Lessor is licensed and taxable under the general excise tax law;
 - (2) The Lessee must be licensed and taxable under the general excise tax law;
 - (3) The Lessee must report the amount paid to the Lessor, the amount of the sublease deduction, and the name and general excise tax number of the Lessor on the Lessee's general excise tax return in lieu of filing a copy of the certificate with the general excise tax return;
 - (4) The Lessee's sublease deduction is limited to leases and subleases in writing and related to the same real property or space; and

- (5) The Lessee must compute the allocations required by section 18-237-16.5-04 and section 18-237-16.5-05 with no allowances for changes during the specified term of the sublease, provided that this requirement shall not apply to a lease with terms that vary in the amount of periodic rent due, including a percentage lease with fixed minimum rent, a percentage lease with no minimum rent, a combination percentage lease with fixed minimum rent or percentage leases with no minimum rent, whichever amount is higher, or a graduated or step-up lease.
- (c) The form of the certificate shall be prescribed by the department of taxation.
- (d) The absence of the certificate shall give rise to the presumption that the Lessee is not allowed the sublease deduction. [Eff 10/01/98 (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-16.5)]

HRS §237-16.5 §18-237-16.5-03 Deduction for sublease of real property or space. (a) General Rule. A Lessee who subleases real property or space shall be allowed a deduction from the amount of gross proceeds or gross income received from the Sublessee. The deduction shall be the total amount paid by the Lessee to the Lessor, subject to the requirements and allocations provided under section 237-16.5, HRS, and sections 18- 237-16.5-03 to 18-237-16.5-06, at the maximum allowable rate. The allowable rate to be used in computing the deduction is as follows:

- (1) For gross proceeds or gross income paid in the months of October, November, and December, 1998, 0.125;
- (2) In calendar year 1999, 0.25;
- (3) In calendar year 2000, 0.375;
- (4) In calendar year 2001, 0.50;
- (5) In calendar year 2002, 0.625;
- (6) In calendar year 2003, 0.75; and
- (7) In calendar year 2004, and thereafter, 0.875.

Example 4: Lessor L leases real property X to lessee A for \$1,000 a year and lessee A subleases the same real property X under a written sublease to sublessee B for \$2,500 a year. B subleases the same real property to “sub-sublessee” C for \$2,500 a year.

A’s deduction would be \$1,000 multiplied by the maximum allowable rate listed above. Using a maximum allowable rate of 0.875 (or 87.5 per cent), A’s deduction would be \$875 ($\$1,000 \times 0.875$). A would be subject to a general excise tax of \$65 ($(\$2,500 - \$875) \times 4$ per cent tax rate).

B’s deduction would be \$2,187.50 ($\$2,500 \times 0.875$). B would be subject to a general excise tax of \$12.50 ($(\$2,500 - \$2,187.50) \times 4$ per cent tax rate). L would be subject to a general excise tax of \$40 ($\$1,000 \times 4$ per cent tax rate).

(b) Percentage leases. Where real property or space is leased under a percentage lease, the amount of gross proceeds or gross income received by the Lessor will vary from period to period because the amount paid by the Lessee to the Lessor is based upon a percentage of the gross sales or net profits of the Lessee’s business. There may be a stipulated minimum lease amount. A percentage lease includes a percentage lease with a fixed minimum lease amount, a percentage lease with no minimum lease amount, and a combination percentage lease with a fixed minimum lease amount or percentage lease with no minimum lease amount, whichever is higher.

Example 5: Assume the same facts as Example 4 above except that A subleases to B for \$2,500 and 10 per cent of C’s sales. B subleases to C for \$2,500 and 20 per cent of C’s sales. If C’s sales for the period were \$4,000, the percentage of sales would be \$400 ($\$4,000 \times 10$ per cent) which would be added to the \$2,500 fixed minimum lease payment. \$2,900 ($\$2,500 + \400) would be paid by B to A and reported by A. Assuming a maximum allowable rate of 87.5 per cent, A’s deduction would be \$875 ($\$1,000 \times 87.5$ per cent). A would be subject to a general excise tax of \$81 ($(\$2,900 - \$875) \times 4$ per cent tax rate).

Because C’s sales for the period are \$4,000, the percentage of sales would be \$800 ($\$4,000 \times 20$ per cent) which is added to the \$2,500 fixed minimum lease payment paid by C to B. \$3,300 ($\$2,500 + \800) would be reported by B. B’s deduction would be \$2,537.50 ($\$2,900 \times 87.5$ per cent). B would be subject to a general excise tax of \$30.50 ($(\$3,300 - \$2,537.50) \times 4$ per cent tax rate).

L would be subject to a general excise tax of \$40 ($\$1,000 \times 4$ per cent tax rate).

Example 6: Assume the same facts as Example 4 above except that A subleases to B for 10 per cent of C's sales with no fixed lease payment. B subleases to C for 20 per cent of C's sales with no fixed lease payment. If C's sales for the period were \$20,000, the percentage of sales would be \$2,000 ($\$20,000 \times 10$ per cent) which would be paid by B to A and reported by A. Assuming a maximum allowable rate of 87.5 per cent, A's deduction would be \$875 ($\$1,000 \times 87.5$ per cent). A would be subject to a general excise tax of \$45 ($(\$2,000 - \$875) \times 4$ per cent tax rate).

Because C's sales for the period are \$20,000, the percentage of sales would be \$4,000 ($\$20,000 \times 20$ per cent) which would be paid by C to B and reported by B. B's deduction would be \$1,750 ($\$2,000 \times 87.5$ per cent). B would be subject to a general excise tax of \$90 ($(\$4,000 - \$1,750) \times 4$ per cent tax rate).

L would be subject to a general excise tax of \$40 ($\$1,000 \times 4$ per cent tax rate). [Eff 10/01/98] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-16.5)

- HRS §237-16.5 §18-237-16.5-04 Allocation — sublease of less than one hundred per cent of the real property or space.** (a) If the Lessee subleases less than one hundred per cent of the real property or space that was leased from the Lessor, the Lessee shall allocate the total amount of gross proceeds or gross income paid by the Lessee for that real property or space based upon the percentage of real property or space subleased, or the fair rental value as determined by the factors in section 18-237-16.5-06. The director of taxation may redetermine the amount of the Lessee's deduction under section 237-16.5(d), HRS, if the director finds that the basis for the allocation is not reasonable or that redetermination is necessary to prevent the avoidance of taxes. The total amount allocated by the Lessee to all subleases shall not exceed the total amount of gross proceeds paid by the Lessee to the Lessor.
- (b) The Lessee's allocation may be based upon the percentage of the real property or space subleased by the Lessee when it is reasonable under the circumstances.
- (1) The percentage of real property or space subleased by the Lessee shall be multiplied by the amount of gross proceeds or gross income paid by the Lessee to the Lessor for the real property or space.
 - (2) The product of the preceding multiplication shall be deducted by the Lessee from the amount of gross proceeds or gross income received for subleasing the real property or space.

Example 7: Lessor L leases real property XYZ, which is divided into spaces X, Y, and Z, to lessee A for \$20,000 (space X at \$10,000 + space Y at \$5,000 + space Z at \$5,000). Lessee A subleases less than one hundred percent of Spaces X (50 per cent) and Y (40 per cent). If reasonable under the circumstances, Lessee A may allocate the \$20,000 paid to Lessor L and compute its tax in the following manner.

Space X

- Step (1) A subleases fifty per cent of Space X for \$7,000. The percentage of Space X subleased (50 per cent) multiplied by the amount of rent paid by A to L for Space X (\$10,000) is \$5,000.
- Step (2) Assuming a maximum allowable rate of 0.875, A's deduction would be \$4,375 ($\$5,000 \times 87.5$ per cent). A would be subject to a general excise tax of \$105 ($(\$7,000 - \$4,375) \times 4$ per cent tax rate) on the income from subleasing fifty per cent of Space X.

Space Y

- Step (1) A subleases forty per cent of Space Y for \$3,000. The percentage of Space Y subleased (40 per cent) multiplied by the amount of rent paid by A to L for Space Y (\$5,000) is \$2,000.
- Step (2) Assuming a maximum allowable rate of 0.875, A's deduction would be \$1,750 ($\$2,000 \times 87.5$ per cent). A would be subject to a general excise tax of \$50 ($(\$3,000 - \$1,750) \times 4$ per cent tax rate) on the income received from subleasing forty per cent of Space Y.

L would be subject to a general excise tax of \$800 ($\$20,000 \times 4$ per cent tax rate).

(c) The Lessee's allocation shall be based upon fair rental value as determined by the factors in section 237-16.5-06 if an allocation based upon the percentage of the real property or space subleased is not reasonable under the circumstances.

- (1) A ratio whose numerator is the fair rental value of the real property or space subleased by the Lessee and whose denominator is the fair rental value of all the real property or space

leased by the Lessee shall be multiplied by the amount of gross proceeds or gross income paid by the Lessee to the Lessor for the real property or space.

- (2) The product of the preceding multiplication shall be deducted by the Lessee from the amount of gross proceeds or gross income received for subleasing the real property or space.

Example 8: Lessor L leases real property Y to lessee A for \$5,000 a month. Y consists of ground floor retail real property (which has a fair rental value of \$7,500) and upper floor office real property (which has a fair rental value of \$2,500) equal in size to the ground floor retail real property. Lessee A subleases only the upper floor office real property to sublessee B for \$2,500 a month.

- Step (1) The property subleased represents twenty five per cent of the fair rental value of real property Y (\$2,500 divided by (\$2,500 + \$7,500)). A's deduction is \$1,250 (25 per cent multiplied by \$5,000 (the gross income paid to L for real property Y)).
- Step (2) Assuming a maximum allowable rate of 0.875, A's deduction would be \$1,093.75 (\$1,250 x 87.5 per cent). A would be subject to a general excise tax of \$56.25 ((\$2,500 - \$1,093.75) x 4 per cent tax rate).

L would be subject to a general excise tax of \$200 (\$5,000 x 4 per cent tax rate). [Eff 10/01/98] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-16.5)

HRS §237-16.5 §18-237-16.5-05 Allocation — Various real property or space with different rental values; sublease of one hundred per cent of the real property or space. If the Lessee leases from the Lessor various real property or space which has different rental values and the Lessee subleases the real property or space, the Lessee shall allocate the total amount of gross proceeds or gross income paid by the Lessee for all real property or space based upon the percentage of real property or space leased, or if not reasonable, the fair rental value as determined by factors in section 237-16.5-06 for each real property or space before the Lessee may compute the deduction under section 237-16.5(g), HRS.

Example 9: Lessor L leases real property XYZ, which is divided into spaces X, Y, and Z, to lessee A for \$10,000. Space X is fifty per cent of the entire real property and spaces Y and Z account for twenty-five per cent each of the real property. Lessee A allocates the gross proceeds paid to L based upon the percentage of space leased as follows: Space X (\$5,000), Space Y (\$2,500), and Space Z (\$2,500). [Eff 10/01/98] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-16.5)

HRS §237-16.5 §18-237-16.5-06 Allocation based upon fair rental value. (a) The Lessee, in addition to the size, quality and location of the real property or space, shall consider the following factors when an allocation under section 18-237-16.5-04 or section 18-237-16.5-05 is required and the allocation based upon the percentage of the real property or space subleased is not reasonable under the circumstances.

- (1) Factors for vacant land.
 - (A) Current rents paid and asked for comparable vacant lands in the same area as of the date when the lease is executed; and
 - (B) The written opinion of a person knowledgeable about rental values for vacant lands, including a real estate appraiser certified under chapter 466K, HRS, or real estate broker licensed under chapter 467, HRS, with a knowledge of rental values for vacant lands.
- (2) Factors for apartment, hotel, and similar residential property.
 - (A) Number and size of the rooms planned to be leased, quality and condition of the building, existence of special services or facilities, and the influence of such amenities as a desirable view;
 - (B) Current rents paid and asked for comparable apartment, hotel, or similar residential property in the same area as of the date when the lease is executed; and
 - (C) The written opinion of a person knowledgeable about rental values for applicable apartment, hotel, or residential property, including a real estate appraiser certified under chapter 466K, HRS, or real estate broker properly licensed under chapter 467, HRS, with a knowledge of rental values for the applicable apartment, hotel, or residential property.
- (3) Factors for store, office, and other commercial property.
 - (A) For a retail store, consider sales volume, existence of nearby competition, and the availability of public transportation and parking facilities;

- (B) Current rents paid and asked for comparable stores, offices, or other commercial properties in the same area as of the date when the lease is executed; and
 - (C) The written opinion of a person knowledgeable about rental values for applicable store, office, and commercial property, including a real estate appraiser certified under chapter 466K, HRS, or real estate broker properly licensed under chapter 467, HRS, with a knowledge of rental values for the applicable store, office, and other commercial property.
- (4) Factors for mining, manufacturing, and other industrial property.
- (A) Gross and net area, ceiling height, physical condition of the real property, availability of parking, loading and other service areas, access to transportation facilities, and the labor market in the area;
 - (B) Current rents paid and asked for comparable mining, manufacturing, and other commercial properties in the same area as of the date when the lease is executed; and
 - (C) The written opinion of a person knowledgeable about rental values for applicable mining, manufacture, and other industrial properties, including a real estate appraiser certified under chapter 466K, HRS, or real estate broker licensed under chapter 467, HRS, with a knowledge of rental values for mining, manufacturing, and other industrial property.
- (5) Factors for farms and ranches.
- (A) For a farm, kinds of crops for which the land is suitable, and the probable yield.
 - (B) Current rents paid and asked for comparable farms and ranches in the same area as of the date when the lease is executed; and
 - (C) The written opinion of a person knowledgeable about rental values for applicable farms and ranches, including a real estate appraiser certified under chapter 466K, HRS, or real estate broker properly licensed under chapter 467, HRS, with a knowledge of rental values for farms and ranches.

(b) This listing of factors is not exclusive. If these factors do not result in a reasonable allocation of the gross proceeds or gross income paid by the Lessee, the Lessee may use or the department of taxation may require the use of other factors. [Eff 10/01/98] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-16.5)

HRS §237-16.5 §18-237-16.5-07 Burden of proof on the taxpayer. The taxpayer has the burden of providing evidence satisfactory to the department of taxation that the taxpayer qualifies to be taxed under section 237-16.5, HRS, instead of section 237-13(10), HRS. If the taxpayer qualifies to be taxed under section 237-16.5, HRS, the taxpayer has the burden of providing evidence satisfactory to the department that the taxpayer qualifies for the deduction for the sublease of the real property or space. [Eff 10/01/98] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-16.5)

§18-237-17 to §18-237-19 (Reserved)

HRS §237-20 §18-237-20-01 Reimbursement exemption, in general. (a) Section 237-20, HRS, provides that the reimbursement of a cost or advance made for or on behalf of one person by the taxpayer shall not constitute gross income to the taxpayer, unless the taxpayer receiving such reimbursement also receives additional monetary consideration for making such cost or advance.

(b) This provision was enacted by Act 297, Session Laws of Hawaii 1967 (Act 297). The Legislature believed that Act 297 “would result in increased clarity of language with respect to the taxability of reimbursements. It is the intent of this bill that payments made by one person through another without monetary gain to the latter shall not create a taxable incident under the general excise tax law”. S. Stand. Com. Rep. No. 877, 1967 Reg. Sess., Haw. S.J. 1230-1231 (1967); H.R. Stand. Comm. Rep. No. 497, 1967 Reg. Sess., Haw. H.J. 658-659 (1967). Act 297, however, has not resulted in “increased clarity”. Since the passage of Act 297, the courts, department of taxation (department), and practitioners, have tried to distinguish between “reimbursements” that are not gross income under section 237-20, HRS, and the receipt of other payments that are included in taxable gross income.

(c) Prior to Act 297, the law regarding reimbursements (old law), read as follows: Even though a business has some of the aspects of agency it shall not be so regarded unless it is a true agency. Without prejudice to the generality of the foregoing, the reimbursement by one person of the amount of costs incurred by another constitutes gross income to the latter, unless the person making the reimbursement was himself, as principal liable in that amount to the third party who furnished the property, services and the like for which the costs were incurred.

The old law provided that the reimbursement exemption was applicable to amounts repaid to an agent (taxpayer) by its principal that reimburse the agent for costs that the principal was liable for. Under the current statute, and these rules an agency relationship is not required to qualify for the reimbursement exemption; although the reimbursement exemption may apply where there is an agency relationship.

(d) The Department issued the first of two administrative guidelines, Taxability of Reimbursement of Costs or Advances under Section 117-17.1 of the General Excise Tax Law, Chapter 117, RLH 1955, as amended by Act 297, L. 1967 on June 17, 1968 (Taxability of Reimbursement, 1968). There are no substantive differences between section 117-17.1 and the current statute.

Some of the principles and examples in these rules are drawn from Taxability of Reimbursement, 1968.

(e) General Excise Tax Memorandum No. 5 was issued by the Department on December 23, 1986 as interim guidance to administer the current statute. These rules expand and clarify the concepts discussed in General Excise Tax Memorandum No. 5 and the Department withdraws General Excise Tax Memorandum No. 5. [Eff July 15, 2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS§ 237-20)

HRS §237-20 §18-237-20-02 Summary of the rules. The reimbursement exemption applies when:

- (1) Taxpayer pays a cost or advance to Third Party (section 18-237-20-05);
- (2) For or on behalf of Reimbursing Party (section 18-237-20-06); and
- (3) Taxpayer is repaid the cost or advance and receives no additional monetary consideration for making the cost or advance (section 18-237-20-4). [Eff July 15, 2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-20)

HRS §237-20 §18-237-20-03 Definitions; generally. For purposes of sections 18-237-20-01 to 18-237-20-07:

“Reimbursement” means an amount that Taxpayer receives from the Reimbursing Party for making the cost or advance for or on behalf of Reimbursing Party and does not include additional monetary consideration.

“Reimbursing Party” means the party who repays the Taxpayer for making the cost or advance to the Third Party for or on behalf of the Reimbursing Party. The term “Reimbursing Party” is used regardless of whether the amount received by the Taxpayer is a taxable or nontaxable reimbursement.

“Taxpayer” means the party attempting to claim the exemption under section 237-20, HRS, for the amount received from the Reimbursing Party. The term “Taxpayer” is used regardless of whether the amount received by the Taxpayer is a taxable or nontaxable reimbursement.

“Third Party” means the party to whom the Taxpayer pays the cost or advance and does not include the Taxpayer’s employees. The term “Third Party” is used regardless of whether the amount received by the Taxpayer is a taxable or nontaxable reimbursement. [Eff July 15, 2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-20)

HRS §237-20 §18-237-20-04 “Additional monetary consideration”, defined. (a) “Additional monetary consideration” means any amount, which Taxpayer receives that is in excess of the cost or advance to Third Party. For there to be no additional monetary consideration, the amount received by Taxpayer must be no more than the cost or advance.

Example 1: Taxpayer, a consultant, is hired by Reimbursing Party to purchase theater tickets. Taxpayer purchases tickets from Third Party. Taxpayer receives from Reimbursing Party a fee and the amount covering the price of the tickets. Conclusion: Taxpayer received additional monetary consideration because Taxpayer received the fee, an amount in excess of the amount paid to Third Party.

Example 2: Taxpayer is in the business of selling equipment. Taxpayer and an equipment manufacturer (Reimbursing Party) have entered into a preexisting cost-splitting agreement to equally share the expenses of advertising manufacturer’s equipment and Taxpayer’s dealership. The advertising is expected to equally benefit manufacturer and Taxpayer. The agreement provides that: Taxpayer will initially pay an advertising agency (Third Party) to provide advertising services, Taxpayer will provide manufacturer with an invoice reflecting all advertising costs, and manufacturer will repay Taxpayer for fifty per cent of the advertising costs without including any amount for Taxpayer’s overhead, salaries, incidental expenses, or profit. Manufacturer repays Taxpayer. Conclusion: Taxpayer does not receive additional monetary consideration.

Example 3: Taxpayer, a real estate broker, and real estate sales agents (Reimbursing Parties), classified as independent contractors for tax purposes, have entered into preexisting cost-splitting agreements relating to the use of Taxpayer’s phones by the agents to make long-distance

telephone calls at Taxpayer's offices. Taxpayer makes its own long-distance telephone calls. Taxpayer pays the phone company (Third Party) for Taxpayer's and the agents' long-distance charges and collects from each agent the exact amount of long-distance charges attributable to that agent at the end of each month without including any amount for Taxpayer's overhead, salaries, incidental expenses, or profit. Conclusion: Taxpayer does not receive additional monetary consideration.

(b) "Additional monetary consideration" includes money, property, services, or any-in-kind payment or value, which Taxpayer receives that is, related to the cost or advance.

Example 4: Assume the same facts as above in Example 3, except that at the end of the month the Taxpayer receives a "rebate" from the phone company based on the volume of long-distance calls. The Taxpayer does not give any portion of the "rebate" to agents that paid for their long-distance calls. Conclusion: The Taxpayer receives additional monetary consideration unless that rebate is passed-on to each agent in proportion to the calls made by each agent and Taxpayer.

(c) "Additional monetary consideration" does not include amounts received by the Taxpayer that are unrelated to the cost or advance to Third Party.

Example 5: Taxpayer, a supermarket, advances \$1,000 for Fish Market (Reimbursing Party) to a Third Party to purchase a truck. The Taxpayer receives from Fish Market \$1,000 for the advance on the truck and \$100 for a refund resulting from returned fish products. Conclusion: The Taxpayer did not receive additional monetary consideration because Taxpayer's \$100 refund is unrelated to the cost or advance to Third Party.

Example 6: The Taxpayer manages owner's (Reimbursing Party) rental unit under a management agreement and receives a fee. The agreement requires the owner's approval for major expenditures relating to the rental unit. The carpet in the unit must be replaced. Taxpayer locates a contractor (Third Party) to replace the carpet. The carpet replacement is a major expenditure under the terms of the management agreement, and Taxpayer secures the owner's approval for the carpet replacement. Taxpayer initially pays contractor for the carpet and owner repays Taxpayer without including any amount for Taxpayer's overhead, salaries, incidental expenses, or profit. Conclusion: The Taxpayer did not receive additional monetary consideration because Taxpayer's management fee is unrelated to the cost or advance to contractor. [Eff July 15, 2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-20)

HRS §237-20 §18-237-20-05 "Cost or advance", defined. (a) "Cost or advance" means the actual invoice amount that a Taxpayer pays to a Third Party.

Example 7: Taxpayer is in the business of selling machinery and performing warranty work on machinery. The manufacturer (Reimbursing Party) directs the Taxpayer to perform warranty work on customer's machinery. Taxpayer is unable to do such work and has another company (Third Party) perform the warranty work. The Third Party sends an invoice for \$100 to Taxpayer and Taxpayer pays the invoice amount. Reimbursing Party pays Taxpayer \$100 with no additional monetary consideration. Conclusion: The \$100 is a cost or advance.

(b) "Cost or advance" does not include an amount that a Taxpayer pays for costs or expenses consumed by the Taxpayer, such as an amount that the Taxpayer pays to its own employees; or an amount representing usage of the Taxpayer's supplies or equipment.

Example 8: Taxpayer provides warranty work for manufacturer (Reimbursing Party). Taxpayer's employees perform warranty work, including repair services and replacement of parts for the manufacturer; no repair services or replacement of parts are performed by persons other than the employees. Taxpayer's employees receive salaries for performing repair services and replacing parts. Taxpayer bills manufacturer a fee of \$1,250 plus \$1,000 representing the salaries paid to Taxpayer's employees for services and replaced parts. Conclusion: The \$1,000 is not a cost or advance.

Example 9: Taxpayer, an accounting firm, bills its client (Reimbursing Party) \$1,000 for professional services plus \$100 representing a share of Taxpayer's overhead costs, including supplies, equipment, and computers. Conclusion: The \$100 is not a cost or advance.

Example 10: Taxpayer, a law firm, bills its client (Reimbursing Party) \$1,000 for professional services plus \$100 for copying costs at 10 cents a page. The copies were made on Taxpayer's copying equipment using Taxpayer's employees. Conclusion: The \$100 is not a cost or advance. [Eff July 15, 2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-20)

- HRS §237-20 §18-237-20-06** **“For or on behalf of Reimbursing Party”, defined.** (a) A payment of a cost or advance is “for or on behalf of Reimbursing Party” when done at the request or direction of Reimbursing Party.
- (b) A cost or advance is done at the request or direction of Reimbursing Party if:
- (1) (A) The payment is made pursuant to a preexisting contract between Reimbursing Party and Third Party that creates a direct obligation for Reimbursing Party to pay Third Party for property or services;
 - (B) The payment is made pursuant to a preexisting contract between Reimbursing Party and Taxpayer whereby Taxpayer pays Third Party for property or services to satisfy an obligation of Reimbursing Party; or
 - (C) The payment is made pursuant to a preexisting cost-splitting contract whereby Taxpayer pays Third Party for property or services provided to both Taxpayer and Reimbursing Party, and Taxpayer receives from Reimbursing Party a payment proportionate to Reimbursing Party's share of the cost of the property or services based upon an actually calculable factor that has an economic basis (e.g., quantity of property, square footage, time spent, lines of advertising);
 - (2) A Taxpayer does not use, consume, or alter the property or services provided by Third Party. Third Party's property or services are used, consumed, or altered by Taxpayer if the property or services are incorporated into or combined with the Taxpayer's property or services or are amounts paid for the Taxpayer's overhead.
- (c) “The payment is made pursuant to a preexisting contract between Reimbursing Party and Third Party that creates a direct obligation for Reimbursing Party to pay Third Party for property or services” is illustrated as follows:

Example 11: Taxpayer manages owner's (Reimbursing Party) rental unit under a management agreement that requires owner's approval for major expenditures relating to the rental unit. Taxpayer locates a contractor (Third Party) to replace the carpet. The written contract with contractor is entered into in the name of owner, rather than Taxpayer, and the contract provides that owner, not Taxpayer, is to pay for the services provided by contractor. Conclusion: The contract between owner and contractor is a preexisting contract that creates a direct obligation for owner to pay contractor for the carpet.

Example 12: Taxpayer manages owner's (Reimbursing Party) rental unit under a management agreement that requires owner's approval for major expenditures relating to the rental unit. The management agreement provides that owner, not the Taxpayer, ultimately is to pay for all major expenditures. Taxpayer locates a contractor (Third Party) to replace the carpet. The carpet replacement is a major expenditure under the terms of the management agreement that owner ultimately is liable for, and the Taxpayer secures owner's approval for the carpet replacement. The written contract with contractor is entered into in the name of the Taxpayer. Taxpayer pays the Contractor's bill and is reimbursed by Reimbursing Party with no additional consideration. Conclusion: The payment is made pursuant to a preexisting contract between Reimbursing Party and the Taxpayer whereby Taxpayer pays Third Party for property or services to satisfy an obligation of Reimbursing Party.

Example 13: Taxpayer, the owner of an office building, leases a portion of the office building to tenant (Reimbursing Party) and agrees to provide janitorial services for tenant. Taxpayer contracts with a company providing janitorial services (Third Party) to clean the office building, including the portion leased to tenant. Taxpayer pays the janitorial services company. Tenant pays Taxpayer rent and its share of the expenses for janitorial services. Conclusion: Neither

the lease nor the janitorial services contract is a preexisting contract that creates an obligation, direct or otherwise, for tenant to pay the janitorial services company for the janitorial services.

Example 14: Taxpayer leases real property from landlord (Third Party) and subleases the real property to a hamburger franchisee (Reimbursing Party). The sublease agreement specifies that franchisee's sublease rent is equal to or less than the amount of lease rent that Taxpayer is required to pay landlord (no additional monetary consideration received by Taxpayer). Franchisee pays its sublease rent to Taxpayer. Taxpayer pays its lease rent to landlord. Taxpayer's lease rent payment to landlord is not made for or on behalf of franchisee because the payment satisfies Taxpayer's obligation to pay rent to landlord under its lease and does not satisfy an obligation of franchisee to landlord. Pursuant to its sublease, franchisee has an obligation to pay sublease rent to Taxpayer. Conclusion: The sublease is not a preexisting contract that creates a direct obligation between franchisee and landlord. This sublease also does not qualify as a preexisting cost splitting contract under section 18-237-20-6(e) as discussed in Example 32. However, Taxpayer may be eligible for the sublease deduction under section 237-16.5, HRS.

Example 15: Assume the same facts as in Example 14, except that instead of Taxpayer directly paying its lease rent to landlord (Third Party), Taxpayer discharges its rental obligation to landlord by requiring franchisee (Reimbursing Party) to directly pay sublease rent it owes Taxpayer to landlord as a condition of the sublease. Conclusion: Franchisee's sublease rent payment is not considered a payment by Taxpayer made for or on behalf of franchisee because the sublease obligates franchisee to Taxpayer and not to landlord. Because the payment also discharges Taxpayer's underlying obligation to landlord, the payment is not a reimbursement of a cost or advance for or on behalf of franchisee to landlord. The sublease merely requires that franchisee's sublease rent payment be directed to landlord to satisfy Taxpayer's lease rent obligation. Franchisee's sublease rent payment directly to landlord is a payment for or on behalf of Taxpayer and not for or on behalf of franchisee. The sublease is not a preexisting contract that creates a direct obligation for franchisee to pay landlord the sublease rent. However, Taxpayer may be eligible for the sublease deduction under section 237-16.5, HRS.

(d) "The payment is made pursuant to a preexisting contract between Reimbursing Party and Taxpayer whereby Taxpayer pays Third Party for property or services to satisfy an obligation of Reimbursing Party" is illustrated as follows:

Example 16: Taxpayer is in the business of selling and performing warranty work on machinery. Manufacturer (Reimbursing Party) directs Taxpayer to perform warranty work on customer's machinery. Taxpayer is unable to do such work so it pays another company (Third Party) to do the warranty work. Conclusion: These warranty work expenses are paid pursuant to a preexisting contract between Taxpayer and manufacturer whereby Taxpayer pays Third Party for property or services to satisfy an obligation of manufacturer.

Example 17: Taxpayer, an attorney, enters into an agreement to represent Client (Reimbursing Party). The agreement is considered an agency agreement because Taxpayer has the power to bind Client, Taxpayer acts as a fiduciary for Client, and Taxpayer is subject to the control of Client. Taxpayer advances fees required by law (recording fees, filing fees, sheriff's fees, witness fees, fees paid to court reporters, and fees paid for publishing legal notices) to Third Parties during the course of representing Client. Conclusion: These fees are paid pursuant to a preexisting contract between Taxpayer and Client whereby Taxpayer pays Third Parties for property or services to satisfy an obligation of Client.

Example 18: Assume the same facts as in Example 17, except that Taxpayer passes-on to Client the costs paid for traveling expenses (lodging, transportation, and meals), long-distance telephone calls, and the cost of reproduction to Third Parties. Conclusion: These costs are not the obligation of client. These costs are the obligation of Taxpayer because they are necessarily incurred by Taxpayer to allow Taxpayer to perform legal services for Client. Taxpayer uses, consumes, or alters Third Parties' services to perform legal services. See section 18-237-20-6(f).

Example 19: Taxpayer, an automobile dealer, sells a car to Customer (Reimbursing Party). As part of the sales agreement, Taxpayer advances the automobile registration fee and Customer's taxes to Third Parties. Conclusion: The fees and taxes are paid pursuant to a preexisting contract between Taxpayer and Customer whereby Taxpayer pays Third Parties for property or services to satisfy obligations of Customer.

Example 20: Taxpayer, an advertising agency, agrees to produce a brochure for customer (Reimbursing Party). Taxpayer will receive a fee and the costs paid to Third Parties. Third Parties develop photographs and print the brochure and send invoices to Taxpayer. Taxpayer pays the invoices and then bills customer for Taxpayer's services and the exact amount of costs paid to Third Parties. Conclusion: While the costs of developing photographs and printing the brochure are paid pursuant to a preexisting contract between Taxpayer and customer, Taxpayer uses, consumes, or alters Third Parties' services to produce the brochure. See section 18-237-20-06(f).

(e) "The payment is made pursuant to a preexisting cost-splitting contract whereby Taxpayer pays Third Party for property or services provided to both Taxpayer and Reimbursing Party, and Taxpayer receives from Reimbursing Party a payment proportionate to Reimbursing Party's share of the cost of the property or services based upon an actually calculable factor that has an economic basis (e.g., quantity of property, square footage, time spent, lines of advertising)" is illustrated as follows:

Example 21: Taxpayer sells equipment. Taxpayer and one of the equipment manufacturers (Reimbursing Party) enter into a cooperative advertising agreement to equally share the expenses of advertising Taxpayer's dealership and manufacturer's equipment. The advertising is expected to equally benefit Taxpayer and manufacturer. The preexisting cost-splitting contract provides that: Taxpayer will initially pay an advertising agency (Third Party) for all the advertising costs, Taxpayer will provide manufacturer with an invoice reflecting all advertising costs, and manufacturer will repay Taxpayer for fifty per cent of the advertising costs, without including any amount for Taxpayer's overhead, salaries, incidental expenses, or profit. Conclusion: The payment to advertising agency is made pursuant to a preexisting cost-splitting contract whereby Taxpayer pays agency for property or services provided to both Taxpayer and manufacturer. Taxpayer receives from manufacturer a payment proportionate to manufacturer's share of the cost of the property or services based upon an actually calculable factor that has an economic basis because Taxpayer and manufacturer will benefit equally from the advertising.

Example 22: Taxpayer, a real estate broker, and its real estate sales agents (Reimbursing Parties), classified as independent contractors for tax purposes, enter contracts regarding sharing of sales commissions and preexisting cost splitting contracts relating to the cost of advertising real property listings in Third Party's newspaper. Taxpayer and each agent agree to place orders to advertise all of the agents' listings in a single advertisement in the newspaper. Taxpayer pays for the portions of the advertisement that refer generally to Taxpayer. All of the advertising work, except for the copy that is submitted by each agent to Taxpayer and then to Third Party, is performed by Third Party. The contract provides that Taxpayer will initially pay Third Party for all the advertising costs. Each agent will repay Taxpayer a portion of the advertising costs based upon the total number of lines of advertising that are attributable to each agent's listings without including any amount for Taxpayer's overhead, salaries, incidental expenses, or profit. Conclusion: The payment to Third Party is made pursuant to a preexisting cost-splitting contract whereby Taxpayer pays Third Party for property or services provided to both Taxpayer and each agent, and Taxpayer receives from each agent a payment proportionate to the agent's share of the cost of the property or services based upon an actually calculable factor that has an economic basis.

Example 23: Assume the same facts as in Example 22, except that Taxpayer and the agents enter into preexisting cost-splitting contracts to equally share the cost of business cards. Taxpayer hires a printing company (Third Party) to print business cards for the agents. The cards have the name of agents as well as the name and logo of Taxpayer. Taxpayer pays the printing company for all the costs to print the agents' cards and each agent repays Taxpayer fifty per cent of the amount paid to the printing company for the agent's cards without including any amount for Taxpayer's overhead, salaries, incidental expenses, or profit. Conclusion: The payment to the printing company is made pursuant to a preexisting cost-splitting contract whereby Taxpayer pays the

printing company for property or services provided to both Taxpayer and each agent, and Taxpayer receives from each agent a payment proportionate to the agent's share of the cost of the property or services based upon an actually calculable factor that has an economic basis.

Example 24: Assume the same facts as in Example 22, except that the real estate broker is the Reimbursing Party and real estate agents are Taxpayers. The real estate broker enters into preexisting cost-splitting contracts with real estate agents to equally share the cost of brochures that advertise the agents' services and affiliation with the real estate broker. The contract provides that agents will initially pay the printing company for all the brochure costs following broker's approval of the form and content of a sample brochure. Broker will repay agents for fifty per cent of the brochure costs, without including any amount for agents' overhead, salaries, incidental expenses, or profit. Conclusion: The payments to the printing company are made pursuant to preexisting cost-splitting contracts whereby agents pay the printing company for property or services provided to agents and broker, and agents receive from broker a payment proportionate to broker's share of the cost of the property or services based upon an actually calculable factor that has an economic basis.

Example 25: Assume the same facts as in Example 22, except that Taxpayer (real estate broker) enters into preexisting cost-splitting contracts with real estate sales agents (Reimbursing Parties) to share the cost of errors and omissions insurance arranged by Taxpayer. The insurance premium paid to the insurance company (Third Party) is increased as each agent receives insurance coverage, and the agent repays Taxpayer one-half of the insurance premium attributable to the agent without including any amount for Taxpayer's overhead, salaries, incidental expenses, or profit. Conclusion: The payment to the insurance company is made pursuant to a preexisting cost-splitting contract whereby Taxpayer pays the insurance company for property or services provided to both Taxpayer and the agent, and Taxpayer receives from each agent a payment proportionate to the agent's share of the cost of the property or services based upon an actually calculable factor that has an economic basis.

Example 26: Assume the same facts as in Example 22, except that broker (Taxpayer) and agents (Reimbursing Parties) participate in the Multiple Listing Service's (MLS) (Third Party) central property advertisement and other services. Taxpayer and agents enter into preexisting cost-splitting contracts that provide that the fee for "loading" each real estate listing is initially paid by Taxpayer. The agent who has the listing repays Taxpayer one-half of the fee for "loading" the listing without including any amount for Taxpayer's overhead, salaries, incidental expenses, or profit. Conclusion: The payment to the MLS is made pursuant to a preexisting cost-splitting contract whereby Taxpayer pays the MLS for property or services provided to both Taxpayer and the agent, and Taxpayer receives from each agent a payment proportionate to agent's share of the cost of the property or services based upon an actually calculable factor that has an economic basis.

Example 27: Assume the same facts as in Example 22, except that broker (Taxpayer) and agents (Reimbursing Parties) participate in the Multiple Listing Service's (MLS) (Third Party) central property advertisement and other services. The annual dues, MLS participation fee, and cost for MLS books are assessed to Taxpayer and each of the agents, but the invoices are sent to Taxpayer. Taxpayer and the agents enter into preexisting cost-splitting contracts that provide that Taxpayer will initially pay the MLS dues, fee, and cost for books for Taxpayer and the agent. The agent will repay Taxpayer the exact amount Taxpayer pays to the MLS that is attributable to each agent without including any amount for Taxpayer's overhead, salaries, incidental expenses, or profit. Conclusion: The payment to the MLS is made pursuant to a preexisting cost-splitting contract whereby Taxpayer pays the MLS for property or services provided to both Taxpayer and the agent, and Taxpayer receives from each agent a payment proportionate to the agent's share of the cost of the property or services based upon an actually calculable factor that has an economic basis.

Example 28: Assume the same facts as in Example 22, except that Taxpayer and the agents (Reimbursing Parties) enter into preexisting cost-splitting contracts relating to the use of Taxpayer's telephones by the agents to make long-distance telephone calls at Taxpayer's office.

Taxpayer makes some long-distance calls. Taxpayer pays the phone company (Third Party) for Taxpayer's and the agents' long-distance charges and collects from each agent the exact amount attributable to each agent at the end of each month without including any amount for Taxpayer's overhead, salaries, incidental expenses, or profit. Conclusion: The payment to the phone company is made pursuant to a preexisting cost-splitting contract whereby Taxpayer pays the phone company for property or services provided to both Taxpayer and the agent, and Taxpayer receives from the agent a payment proportionate to the agent's share of the cost of the property or services based upon an actually calculable factor that has an economic basis.

Example 29: Taxpayer, an architect, enters into a contract with client (Reimbursing Party). The contract provides that Taxpayer will receive, in addition to a fee for professional services, the costs paid to Third Parties. These costs include traveling expenses (lodging, transportation, and meals), long-distance telephone calls, the cost of reproduction, and postage and handling of drawings and specifications incurred in connection with projects for client. Taxpayer pays Third Parties and breaks down the billing to client into professional services and the exact amount of these incidental costs paid to Third Parties. Conclusion: The payments to Third Parties are not made pursuant to a preexisting cost-splitting contract whereby Taxpayer pays Third Parties for property or services provided to both Taxpayer and Reimbursing Party, and Taxpayer receives from client a payment proportionate to client's share of the cost of the property or services based upon an actually calculable factor that has an economic basis. These services are provided to Taxpayer to allow Taxpayer to fulfill its contract with client; the services are not provided to both Taxpayer and client.

Example 30: Taxpayer, the owner of an office building, leases the office building to tenants (Reimbursing Parties) and agrees to provide janitorial services for the tenants. Taxpayer contracts with a company providing janitorial services (Third Party) to clean the office building. Taxpayer pays the janitorial services company. Tenants pay Taxpayer rent and a share of the amount paid by Taxpayer to the janitorial services company. Conclusion: The payment to the janitorial services company is not made pursuant to a preexisting cost-splitting contract whereby Taxpayer pays the janitorial services company for property or services provided to both Taxpayer and tenants, and Taxpayer receives from tenants a payment proportionate to tenants' share of the cost of the property or services based upon an actually calculable factor that has an economic basis. These janitorial services are provided to Taxpayer to allow Taxpayer to fulfill its contract with tenants. The amounts received by Taxpayer for these janitorial services are deemed to be part of the rent received by Taxpayer and do not qualify as a nontaxable reimbursement.

Example 31: Assume the same facts as in Example 30, except that the owner of the office building (Taxpayer) contracts with a property management company to rent and maintain the building and the property management company contracts with a janitorial services company (Third Party) to clean the office building. Conclusion: The reimbursement exemption is not applicable to either Taxpayer or the property management company. (1) Taxpayer is subject to the general excise tax on the rent received from tenants, including the amounts received for janitorial services. The reimbursement exemption is not applicable because the payment to the janitorial service company is not made pursuant to a preexisting cost-splitting contract. (2) The property management company is subject to the general excise tax on the income received for managing the building, but not for Taxpayer's income, including the amounts received by Taxpayer for janitorial services.

Example 32: Assume the same facts as in Example 14. Conclusion: Franchisee's (Reimbursing Party) sublease rent payment is made pursuant to a sublease between Taxpayer and franchisee, not pursuant to a preexisting cost-splitting contract. Unlike a preexisting cost-splitting contract involving three parties where Taxpayer and Reimbursing Party agree to proportionately share the cost of property or services provided by Third Party to both Taxpayer and Reimbursing Party, a sublease is a contract between only two parties where one party (the franchisee/Reimbursing Party) agrees to pay rent to another (Taxpayer) in return for the use and possession of property. In this lease-sublease arrangement, the landlord (Third Party) provides the use and possession of property to Taxpayer in exchange for rent. Subsequently, Taxpayer provides the use and possession of the property to franchisee/Reimbursing Party in exchange for rent. The property

is not provided to Taxpayer and franchisee at the same time, and the cost of using real property is not shared by Taxpayer and franchisee.

(f) “Taxpayer does not use, consume, or alter the property or services provided by Third Party” is illustrated as follows:

Example 33: Taxpayer is in the business of selling and performing warranty work on machinery. Manufacturer (Reimbursing Party) directs Taxpayer to perform warranty work on customer’s machinery. Taxpayer is unable to do such work so it pays Third Party to do the warranty work. Conclusion: Taxpayer does not use, consume, or alter Third Party’s services because the warranty work is not incorporated into or combined with Taxpayer’s property or services. Third Party’s warranty work is provided to manufacturer’s customer.

Example 34: Assume the same facts as in Example 29, relating to the architect. Conclusion: The traveling expenses, long-distance telephone calls, the reproduced items, and postage are used, consumed, or altered because these incidental services are incorporated into or combined with Taxpayer’s architectural services.

Example 35: Taxpayer, an interior decorator, is hired to decorate customer’s (Reimbursing Party) house. Taxpayer buys rugs and furnishings from a furniture store (Third Party) for customer. Conclusion: Taxpayer uses, consumes, or alters Third Parties’ property because the property is incorporated into or combined with Taxpayer’s interior decoration services.

Example 36: Taxpayer, an accounting firm, is hired by customer (Reimbursing Party) to audit its financial records. Because the audit requires more personnel hours than could be performed by Taxpayer’s personnel, Taxpayer contracts with another accounting firm (Third Party) to perform part of the audit work, and combines that work with the work of Taxpayer’s auditors. Taxpayer pays the other accounting firm. Conclusion: Even if Taxpayer separately bills customer for the exact amount paid to the other accounting firm, Taxpayer uses, consumes, or alters the other accounting firm’s services because the services are incorporated into or combined with Taxpayer’s services.

(g) A cost or advance cannot be made for or on behalf of Reimbursing Party if Taxpayer makes the cost or advance before a request by Reimbursing Party.

Example 37: Assume the same facts as in Example 16, relating to warranty work on customer’s machinery. Conclusion: The payment for warranty work is a cost or advance because Taxpayer makes the cost or advance (payment of expenses) after a request by Reimbursing Party.

Example 38: Taxpayer signs a contract with Third Party that provides Taxpayer unlimited access to a research database. Taxpayer subsequently allows Reimbursing Party to access the database using Taxpayer’s account and charges Reimbursing Party one-half of the access fee. Conclusion: The access fee is not a cost or advance for or on behalf of Reimbursing Party because Taxpayer makes the cost or advance (purchase of access to the data base) prior to any request by Reimbursing Party. [Eff. July 15, 2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-20)

HRS §237-20 §18-237-20-07 Burden of proof on Taxpayer. (a) Taxpayer has the burden of providing evidence satisfactory to the Department that Taxpayer qualifies for the reimbursement exemption. Whether the transaction qualifies for the reimbursement exemption is determined by all the facts and circumstances; no single factor is controlling.

(b) The designation or characterization by Taxpayer of a receipt of a payment as a reimbursement that qualifies for exemption from the general excise tax is not controlling. The substance of a transaction, not the form of the transaction nor the designation used by Taxpayer, shall determine whether the reimbursement exemption is applicable.

Example 39: Taxpayer provides market surveys, issues press releases, and places advertisements for client (Reimbursing Party). Taxpayer’s contract with client includes a provision that costs of transportation, living expenses when traveling, payments for long distance telephone calls and telegrams, and other payments to Third Parties are deemed “reimbursements”.

Taxpayer's billings to client are broken down into services and "reimbursements". Taxpayer receives payments from client and files a general excise tax return and excludes these costs paid to Third Parties claiming the reimbursement exemption. Conclusion: The expenses designated by Taxpayer as "reimbursements" do not qualify for the reimbursement exemption because the payments from Taxpayer to Third Parties were not for or on behalf of client. The property or services provided by the Third Parties were used, consumed, or altered by Taxpayer. Even though Taxpayer has claimed these costs as qualifying for the reimbursement exemption, such costs do not qualify for the reimbursement exemption." [Eff July 15, 2006] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-20)

§18-237-21 to §18-237-29

(Reserved)

SUBCHAPTER 3

RETURNS AND PAYMENTS

HRS §237-30 **§18-237-30** **Monthly, quarterly, or semiannual returns.** (a) These rules also apply to section 238-5, HRS.

(b) The director may permit a taxpayer to file tax returns and make payments of the tax on a quarterly or semiannual basis during a calendar or fiscal year if the director is satisfied that: (1) granting this permission will not unduly jeopardize the collection of the taxes due, and (2) the taxpayer's total general excise tax liability for the calendar or fiscal year will not exceed \$2,000 for quarterly returns, or \$1,000 for semiannual returns.

(c) The director also may permit a taxpayer to make monthly payments based on estimated quarterly or semiannual liability, where the payments are to be made on or before the last day of the calendar month following the month in which they accrue, provided the taxpayer files a reconciliation return at the end of each quarter or six-month period during the calendar or fiscal year. Taxpayers shall apply for permission to make monthly payments of general excise tax based on estimated quarterly or semiannual liability on forms prescribed by the department.

(d) If a taxpayer's request under subsection (b) or (c) is granted, the director shall inform the taxpayer of the effective date. If the request is denied, the director shall inform the taxpayer of the reasons for denial.

(e) A taxpayer may file use tax returns and make payments of the tax on a quarterly or semiannual basis during a calendar or fiscal year if the taxpayer has permission to file general excise tax returns on a quarterly or semiannual basis pursuant to subsection (b).

(f) A taxpayer may make monthly payments of use tax based on estimated quarterly or semiannual liability with a reconciliation return at the end of each quarter or six-month period during the calendar or fiscal year if the taxpayer has permission to make monthly payments of general excise tax based on estimated quarterly or semiannual liability pursuant to subsection (c).

(g) All applications, returns, or payments shall be filed with or sent to the office of the taxation district in which the privilege upon which the tax accrued is exercised. Where the privilege is exercised in more than one taxation district, the applications, returns, or payments shall be filed with or sent to the office of the first taxation district.

The applications and returns shall be on forms prescribed by the department. The department may refuse to accept any incomplete application or return.

(h) A taxpayer that has temporarily ceased to conduct business or has determined that no tax is owed for that month, quarter, or six-month period, as the case may be, shall nevertheless file the appropriate periodic return for that period, unless inactive status has been granted under section 18-231-3-14.16(c).

(i) The director may revoke the permission given under subsection (b) or (c) at any time if:

- (1) A taxpayer who has been granted permission to file returns and make payments on a quarterly or semiannual basis during the calendar or fiscal year becomes delinquent in either filing the returns or the payment of taxes due;
- (2) A taxpayer who has been granted permission to make monthly payments based on estimated quarterly or semiannual liability and to file a reconciliation return at the end of each quarter or six-month period during the calendar or fiscal year becomes delinquent in either making monthly payments or filing reconciliation returns;
- (3) The director determines that the taxpayer's estimated quarterly or semiannual liability has been unreasonably underestimated, for example, where less than sixty per cent of the actual tax liability for a quarter is paid in the first two months of that quarter and the underestimation was not due to seasonal activities or the like;

- (4) The director determines that the taxpayer plans to depart quickly from the State, is disposing of or concealing assets, or is doing any other act tending to prejudice or jeopardize the proper administration of chapters 237 and 238, HRS, including the assessment or collection of a deficiency, in which case the director also may immediately assess, to the extent not previously assessed, the taxes imposed by chapters 237 and 238, HRS; or
- (5) The taxpayer's total tax liability for the calendar or fiscal year exceeds \$1,000 for semiannual returns or \$2,000 for quarterly returns.

Upon revocation under paragraphs (1) to (5), the taxpayer shall file a return of the installment of the tax for which the taxpayer is liable on or before the last day of the calendar month following the month in which the determination is made and transmit the return, together with a remittance for the amount of the tax, to the office of the appropriate taxation district. The taxpayer also shall file returns for each month thereafter unless permission is later granted to the taxpayer under subsection (b) or (c).

(j) In the event of any change of ownership or other transfer of business of a taxpayer who has been granted permission to make quarterly or semiannual returns and payments or to make monthly payments based on an estimated quarterly or semiannual liability and to file a reconciliation return at the end of each quarter or six-month period during the calendar or fiscal year, the taxpayer shall immediately notify the director of such change or transfer, and the permission previously granted to the taxpayer under subsection (b) or (c) shall be automatically revoked. Upon revocation, the taxpayer shall file a return of the installment of the tax for which the taxpayer is liable on or before the last day of the calendar month following the month in which the change of ownership or other transfer of business took place and transmit the return, together with a remittance for the amount of the tax, to the office of the appropriate taxation district. A transfer or change occurs, for example, if a sole proprietorship is changed to a partnership or corporation. The director may grant permission to the new owner or transferee to make quarterly or semiannual returns and payments or to make monthly payments based on estimated quarterly or semiannual liability, as provided for under subsections (b) and (c). [Eff 2/16/82; am 6/18/94] (Auth: HRS §§231-3(9), 237-8, 237-30) (Imp: HRS §§237-30, 238-5)

§18-237-31 to §18-237-32

(Reserved)

HRS §237-33 §18-237-33-01 Annual return. (a) In addition to the monthly, quarterly, or semiannual return, every taxpayer shall file an annual return on or before the twentieth day of the fourth month following the close of the taxable year with the taxation district office where the privilege upon which the tax accrued is exercised, or, where the privilege is exercised in more than one taxation district, with the office of the first taxation district. The annual return shall summarize the taxpayer's liability under this chapter for the year.

(b) The annual return shall be signed as follows:

- (1) The return of an individual shall be signed by the taxpayer;
- (2) The return of a corporation shall be signed by any officer;
- (3) The return of a partnership shall be signed by any partner;
- (4) The return of a trust, estate, or other entity having a fiduciary shall be signed by the personal representative, trustee, guardian, or other fiduciary, and if the entity has more than one fiduciary the return may be signed by any fiduciary;
- (5) The return of a husband and wife who jointly engage in business may be signed by either the husband or wife; or
- (6) Any return may be signed by a person having written authority to act on behalf of the taxpayer for this purpose; provided that the signer shall attach to the return a copy of the writing giving the signer that authority.

(c) The department may extend the time for making the annual tax return on the application of any taxpayer. The department shall grant reasonable additional time within which to make the return as the department may deem advisable for good cause shown.

- (1) The extension shall be granted only if all required monthly, quarterly, or semiannual tax returns have been filed.
- (2) In making a request for extension, the taxpayer shall file an application for extension on a form prescribed by the department with the appropriate taxation district office on or before the due date of the annual tax return, specifying the reason for the delay. On or before the original due date of the return, there shall be paid through monthly, quarterly, or semiannual tax payments or a payment accompanying the application for an extension an amount equal to the estimated tax due for the taxable year but in any case not less than ninety per cent of the tax for the taxable year.

- (3) The annual tax return shall be filed during the time period specified in the extension, with payment of any tax to the extent not already paid. A duplicate of the approved application for extension shall be attached to the return.
- (4) Each extension shall be granted for a period of not more than three months. In no event shall an extension be given that will extend filing of the return for more than six months from the original due date of the return.
- (5) An application for extension shall be signed by any person who may sign the annual return, or by a duly licensed attorney or certified public accountant on behalf of the attorney's or accountant's client. [Eff 6/18/94] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §§231-15, 231-15.6, 231-15.7, 237-33)

HRS §237-33 §18-237-33-02 Short year return; change of ownership or cessation of business. (a) Change of ownership, complete transfer of business, going out of business, or otherwise ceasing to conduct business activity shall close the taxable year. As used in this section, a change of ownership means that the business is conducted by a different person or company. A change in ownership occurs, for example, if a sole proprietorship is changed to a partnership or corporation.

(b) If there is a change of ownership or complete transfer of business, or if a taxpayer goes out of business or otherwise ceases to conduct business activity, the taxpayer shall notify the director of the change, transfer, or cessation of business not more than ten days after the change, transfer, or cessation occurs in accordance with section 18-231-3-14.16(b).

(c) The taxpayer shall prepare and submit an annual tax return summarizing the months of the year engaged in the business activity on or before the twentieth day of the fourth month following the month in which the change of ownership, complete transfer of business, or cessation of business took place.

(d) A taxpayer filing any return required by this section may apply for an extension under section 18-237-33-01(d). [Eff 6/18/94] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-33)

HRS §237-34 §18-237-34-01 Repealed. [R 12/07/2006]

HRS §237-34 §18-237-34-02 Repealed. [R 12/07/2006]

HRS §237-34 §18-237-34-03 Repealed. [R 12/07/2006]

HRS §237-34 §18-237-34-04 Repealed. [R 12/07/2006]

HRS §237-34 §18-237-34-05 Repealed. [R 12/07/2006]

HRS §237-34 §18-237-34-06 Repealed. [R 12/07/2006]

HRS §237-34 §18-237-34-07 Repealed. [R 12/07/2006]

HRS §237-34 §18-237-34-08 Repealed. [R 12/07/2006]

HRS §237-34 §18-237-34-09 Repealed. [R 12/07/2006]

HRS §237-34 §18-237-34-10 Repealed. [R 12/07/2006]

HRS §237-34 §18-237-34-11 Repealed. [R 12/07/2006]

HRS §237-34 §18-237-34-12 Repealed. [R 12/07/2006]

18-237-35 (Reserved)

SUBCHAPTER 4

ASSESSMENTS, REFUNDS, AND RECORDS

§18-237-36 to §18-237-40 (Reserved)

HRS §237-41 §18-237-41 **Records to be kept; resale certificates.** (a) For the duties of sellers and purchasers regarding resale certificates, see section 18-237-13-02(d).

(b) For rules regarding records to be kept, see sections 18-231-3-14.21 to 18-231-3-14.25. [Eff 2/16/82; am 8/18/94] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §§237-41, 255-1)

SUBCHAPTER 5

(Reserved)

SUBCHAPTER 6

(Reserved)

EXHIBIT A

Specialty Contractor Classifications

**Excerpt from Department of Commerce and Consumer Affairs
Chapter 77, Hawaii Administrative Rules
Effective: May 23, 2003**

EXHIBIT A

Specialty Contractor Classifications

Specialty contractors are further classified under the following subclassifications:

- C-1 Acoustical and insulation contractor;
- C-2 Mechanical insulation contractor;
- C-3 Asphalt paving and surfacing contractor;
- C-3a Asphalt concrete patching, sealing, and striping contractor;
- C-3b Play court surfacing contractor;
- C-4 Boiler, hot-water heating, and steam fitting contractor;
- C-5 Cabinet, millwork, and carpentry remodeling and repairs contractor;
- C-5a Garage door and window shutters contractor;
- C-5b Siding application contractor;
- C-6 Carpentry framing contractor;
- C-7 Carpet laying contractor;
- C-9 Cesspool contractor;
- C-10 Scaffolding contractor;
- C-12 Drywall contractor;
- C-13 Electrical contractor;
- C-14 Sign contractor;
- C-15 Electronic systems contractor;
- C-15a Fire and burglar alarm contractor;
- C-15b Telecommunications contractor;
- C-16 Elevator contractor;
- C-16a Conveyor systems contractor;
- C-17 Excavating, grading, and trenching contractor;
- C-19 Asbestos contractor;
- C-20 Fire protection contractor;
- C-20a Fire repressant systems contractor;
- C-21 Flooring contractor;
- C-22 Glazing and tinting contractor;
- C-22a Glass tinting contractor;
- C-23 Guniting contractor;
- C-24 Building moving and wrecking contractor;

C-25 Institutional and commercial equipment contractor;
 C-27 Landscaping contractor;
 C-27a Hydro mulching contractor;
 C-27b Tree trimming and removal contractor;
 C-31 Masonry contractor;
 C-31a Cement concrete contractor;
 C-31b Stone masonry contractor;
 C-31c Refractory contractor;
 C-31d Tuckpointing and caulking contractor;
 C-31e Concrete cutting, drilling, sawing, coring, and pressure grouting contractor;

 C-32 Ornamental, guardrail, and fencing contractor;
 C-32a Wood and vinyl fencing contractor;
 C-33 Painting and decorating contractor;
 C-33a Wall coverings contractor;
 C-33b Taping contractor;
 C-33c Surface treatment contractor;
 C-34 Soil stabilization contractor;
 C-35 Pile driving, pile and caisson drilling, and foundation contractor;
 C-36 Plastering contractor;
 C-36a Lathing contractor;
 C-37 Plumbing contractor;
 C-37a Sewer and drain line contractor;
 C-37b Irrigation and lawn sprinkler systems contractor;
 C-37c Vacuum and air systems contractor;
 C-37d Water chlorination and sanitation contractor;
 C-37e Treatment and pumping facilities contractor;
 C-37f Fuel dispensing contractor;
 C-38 Post tensioning contractor;
 C-40 Refrigeration contractor;
 C-40a Prefabricated refrigerator panels contractor;
 C-41 Reinforcing steel contractor;
 C-42 Roofing contractor;
 C-42a Aluminum and other metal shingles contractor;
 C-42b Wood shingles and wood shakes contractor;
 C-42c Concrete and clay tile contractor;
 C-42e Urethane foam contractor;
 C-42g Roof coatings contractor;
 C-43 Sewer, sewage disposal, drain, and pipe laying contractor;
 C-43a Reconditioning and repairing pipeline contractor;

- C-44 Sheet metal contractor;
- C-44a Gutters contractor;
- C-44b Awnings and patio cover contractor;
- C-48 Structural steel contractor;
- C-48a Steel door contractor;
- C-49 Swimming pool contractor;
- C-49a Swimming pool service contractor;
- C-49b Hot tub and pool contractor;
- C-51 Tile contractor;
- C-51a Cultured marble contractor;
- C-51b Terrazzo contractor;
- C-52 Ventilating and air conditioning contractor;
- C-53 Miscellaneous retail products contractor;
- C-54 Interior design contractor;
- C-55 Waterproofing contractor;
- C-56 Welding contractor;
- C-57 Well contractor;
- C-57a Pumps installation contractor;
- C-57b Injection well contractor;
- C-60 Solar power systems contractor;
- C-61 Solar energy systems contractor;
- C-61a Solar hot water systems contractor;
- C-61b Solar heating and cooling systems contractor;
- C-62 Pole and line contractor;
- C-62a Pole contractor;
- C-63 High voltage electrical contractor; and
- C-68 Classified specialist.

The scope of work of each specialty contractor classification shall be as follows:

- C-1 **Acoustical and insulation contractor.** To install interior or exterior acoustic tile systems, spray systems, and insulation in buildings and structures for the purpose of sound control. These systems or materials may be installed independently of or in conjunction with acoustic tile and/or drywall systems as multipurpose (acoustic, insulation, fire retardant) systems;

- C-2 **Mechanical insulation contractor.** To install insulation materials on mechanical systems for the purpose of temperature control.
- C-3 **Asphalt paving and surfacing contractor.** To proportion, mix, and place base materials; and to place paving and surfacing consisting of graded mineral aggregates bonded with asphalt or bituminous materials so that a firm, smooth surface suitable for roadways, runways, driveways, parking areas, and play areas is obtained, including the application of seal coating and parking lot or highway striping;
- C-3a **Asphalt concrete patching, sealing, and striping contractor.** To patch asphalt roadways, runways, driveways and parking areas so that a suitable surface is obtained; to seal coat surfaces, to paint parking stripes, highway stripes, or playcourt lines, and to install epoxy buttons or white dome dividers on highways;
- C-3b **Play court surfacing contractor.** To prepare or install existing or new surfaces; to install materials or apply top or seal coating so that a level, suitable play court surface is obtained; and to paint playcourt lines;
- C-4 **Boiler, hot-water heating, hot water supply, and steam fitting contractor.** To install and repair fire-tube and water-tube power boilers, packaged boiler systems, hot-water heating and hot water supply boilers, and thermal fluid systems; including all fitting and piping, valves, gauges, pumps, radiators, convectors, fuel oil tanks, fuel oil lines, hazardous waste storage tanks, chimneys, flues, heat insulation, and all other devices, apparatus, and equipment appurtenant thereto, including the insulation of pipes in connection with the boiler installation or repair, and installation of hydromatic radiant heating systems (warm floor) provided these are connected to a boiler;
- C-5 **Cabinet, millwork, and carpentry remodeling and repairs contractor.** To install cabinets, cases, sashes, doors, trims, or nonbearing partitions that become a permanent part of structure, and to remodel or to make repairs to existing buildings or structures, or both; and to do any other work which would be

incidental and supplemental to the remodeling or repairing. The repairs, carpentry work, or remodeling shall include the installation of window shutters, garage doors, bifold, and shutter doors; and the installation of manufactured sidings and any other work that would not involve changes or additions to the building's or structure's basic components such as, but not limited to, foundations, beams, rafters, joists, or any load bearing members or sections;

- C-5a **Garage door and window shutters contractor.** To install overhead, mechanical and sliding garage doors, including installation of window shutters which involves similar installation methods;

- C-5b **Siding application contractor.** To prepare surfaces and install aluminum, vinyl or other manufactured siding, with the exception of wood, so that a watertight surface is obtained;

- C-6 **Carpentry framing contractor.** To do wood and metal framing, siding, wood truss, roof sheathing, and other work as is by custom and usage accepted in the construction industry as carpentry framing;

- C-7 **Carpet laying contractor.** To apply or install acceptable fabric floor coverings, artificial turf, or other prefabricated materials to surfaces;

- C-9 **Cesspool contractor.** To excavate and install cesspools and septic tanks in compliance with the requirements of the department of health;

- C-10 **Scaffolding contractor.** To erect or dismantle scaffolds only. The other contractor classifications may automatically perform this type of work in connection with their classifications;

- C-12 **Drywall contractor.** To layout and install nonstructural metal studs, channel and joist framing systems, and all types of gypsum wallboard systems, including the taping and texturing operations incidental thereto. Also included is the application of spray on

barriers which would be incidental to the installation of wallboard;

- C-13 **Electrical contractor.** To place, install, erect, or connect any electrical wires, fixtures, appliances, apparatus, electrical signs, conduits, poles, raceways, and to do trenching, backfilling, patching, and surface restoration in connection with the installation of conduits and lines which transmit, transform, or utilize electrical energy less than 600 volts phase to phase. This classification also includes the work of the C-15 electronic systems contractor and C-60 solar power systems contractor;
- C-14 **Sign contractor.** To fabricate or install electrical or nonelectrical signs and sign devices for the purpose of display, advertising, or directions; and to install all sign supports and sign accessories;
- C-15 **Electronic systems contractor.** To install electronic equipment and electronic controls, including but not limited to, public address, intercommunication, master antenna, and music distribution systems, CATV systems, master and program clock systems, electronic teaching devices, and other systems including electric door opening devices and fire and burglar alarm systems; provided that this shall not include the installation of any conduits thereto;
- C-15a **Fire and burglar alarm contractor.** To install, maintain, and repair central fire and burglar alarm systems; provided that this shall not include the installation of any conduits thereto;
- C-15b **Telecommunications contractor.** To install, maintain, and repair telephone, computer, and data systems; including the associated cabling, wiring, or fiber optics; provided that this shall not include the installation of any conduits thereto;
- C-16 **Elevator contractor.** To assemble and install and maintain sheave beams, motors, sheaves, cable and wire rope, guides, cab, counterweight, door assemblies, hydraulic systems, automatic and manual control systems, signal systems, and all other devices, apparatus, and equipment for the safe and efficient

installation and operation of electrical, hydraulic, and manually operated elevators, dumb waiters, moving walks or ramps, conveyor systems, stage lifts, escalators, and man lifts excluding any lift or conveyor used in constructing a building or structure. To make or oversee alterations within the cab of the elevator which require a permit from the department of labor and industrial relations;

- C-16a **Conveyor systems contractor.** To install belt line conveyor systems including installation of baggage carousels;
- C-17 **Excavating, grading, and trenching contractor.** To dig, move, and place earthen material for a cut, fill, grade, or trench, including the use of explosives in connection therewith;
- C-19 **Asbestos contractor.** To engage in any activity involving the application, enclosure, removal, encapsulation, renovation, repair, demolition, or other disturbances of asbestos or asbestos-containing material that may become friable;
- C-20 **Fire protection contractor.** To lay out and install approved types of fire prevention and protective systems, including all mechanical apparatus, devices, piping, and equipment appurtenant thereto. The licensee shall comply with applicable provisions of the National Board of Fire Underwriters (NBFU) standards to meet all requirements of the local authorities having jurisdiction;
- C-20a **Fire repressant systems contractor.** To install tanks, piping, sprinkler heads, dry chemical systems, CO₂ systems, and halon systems related to fire repressant systems;
- C-21 **Flooring contractor.** To apply or install floor covering material such as linoleum, rubber, vinyl, cork, asphalt, plastic aluminates, or other materials that are by custom and usage accepted in the construction industry as composition flooring; including the installation of wood floor covering and also to include floor sanding and refinishing of floor surfaces. This also includes the use of rubber granules to create a floor covering or surface;

- C-22 **Glazing and tinting contractor.** To glaze or tint frames, panels, sash, and doors. To assemble and install window wall and curtain wall, shower doors, tub enclosures, mirrors, metal windows and screens, metal sliding doors, metal jalousies, store front metal and trim, plastics, tempered glass doors; including items such as frames and hardware and any allied products not stated above but affiliated with the glass and glazing industry;
- C-22a **Glass tinting contractor.** To apply any material or combination of materials to surfaces described in the C-22 classification above, to provide a tinting shield from natural or artificial light;
- C-23 **Gunite contractor.** To pneumatically apply aggregates, cement, and water as gunite and finish the surface; including the setting of ground wires and pencil rods to establish the finished surface planes;
- C-24 **Building moving and wrecking contractor.** To move, post, or demolish structures including removal of debris and to dismantle or free specific portions of a structure in order that it can be raised and moved. Posting shall be limited to placing a structure in position on a property only, and renovations shall not be included;
- C-25 **Institutional and commercial equipment contractor.** To install industrial instrumentation including, but not limited to, pneumatic instrumentation systems, laboratory equipment, lockers, and food services equipment, folding and sliding partitions, folding bleachers, stationary metal partitions, raised floor systems, prefabricated systems using metal chutes, incinerator, stages and rigging of stage curtains and racks, jail and prison equipment, and related locking devices or control systems, and other equipment and materials as are by custom and usage accepted in the construction industry as institutional and commercial equipment work; and to install factory built stoves, fireplaces, and prefabricated steel chimneys;
- C-27 **Landscaping contractor.** To prepare plots of land for architectural horticulture and to provide tree trimming, decorative treatment and arrangement of gardens, lawns, shrubs,

vines, bushes, trees, and other decorative vegetation; construct conservatories, hot and green houses, drainage and sprinkler systems, all types of rockscaping and ornamental pools, fountains, ornamental walls, fences, and walks; and placement of hydro mulching for ground cover and for containment of soil. This also includes the installation of irrigation control or decorative lamp electrical wiring associated with the above that will carry 24 volts or less;

- C-27a **Hydro mulching contractor.** To place hydro mulch material as a bed for ground cover and for containment of soil;
- C-27b **Tree trimming and removal contractor.** To prune, trim, and remove trees, including stumps, and restore ground to condition similar to adjacent area; provided that this does not include the relocation and planting of field grown trees;
- C-31 **Masonry contractor.** To lay brick and other baked clay products, rough or cast stone, marble, granite, or any decorative plaster, cut and dressed stone, artificial stone and brick veneer, CMU, and structural glass, brick or block, laid with or without mortar or adhesives, manufactured precast concrete facing and back-up panels and brick or block panel; installation of fire clay products and refractories; installation of concrete fencing; installation of grout, rubble work, caulking, tuckpointing, sandblasting, mortar, washing, and cleaning related to masonry construction; to place and finish cement concrete; to drill, saw, and core concrete; and to do epoxy injection in concrete for structural purposes;
- C-31a **Cement concrete contractor.** To mix aggregates, cement, and water in order to make acceptable concrete; to place and finish concrete including the setting of screeds and forms; to do tuckpointing and caulking of concrete block and pre-cast stone; to caulk metal to concrete and masonry; to cut, drill, saw, core, and pressure grout concrete; to do sandblasting, waterblasting, cleaning, sealing, and epoxy injection of concrete; and to perform spall repair;

- C-31b **Stone masonry contractor.** To construct ornamental walls, veneer walls, and structural walls or columns from marble, granite, or any decorative plaster, stone, artificial stone, rough or cast stone, or veneer stone; to lay stone in a manner that an acceptable paved surface is obtained; and to construct stone retaining walls with or without mortar, in conformance with building code requirements;
- C-31c **Refractory contractor.** To set or install high temperature fire clay and refractory products or equipment;
- C-31d **Tuckpointing and caulking contractor.** To do tuckpointing, caulking, and sealing of concrete block and pre-cast stone; to caulk metal to concrete and masonry; and to perform spall repair;
- C-31e **Concrete cutting, drilling, sawing, coring, and pressure grouting contractor.** To cut, drill, saw, core, and pressure grout concrete;
- C-32 **Ornamental, guardrail, and fencing contractor.** Installation of all types of structural and nonstructural units for residential, commercial, and industrial construction, both interior and exterior including, but not limited to, folding gates, guardrails, handrails, stairs, fencing and gates, window shutters and grills, roll up shades, non-electrical signs, room dividers and shields, accessories, railings, and traffic safety devices;
- C-32a **Wood and vinyl fencing contractor.** To install, maintain, or repair wood or vinyl fencing;
- C-33 **Painting and decorating contractor.** To apply materials common to the painting and decorating industry for protective and decorative purposes, including highway and parking striping and painting of playcourt lines, by the use of, but not limited to, emulsions, waxes, water repellants, epoxes, polyesters, urethane, liquid-glass, fibrous, cement, and rubber base coatings. Surface preparations of all types, caulking, sandblasting, waterblasting, power cleaning, or steam cleaning preparatory to painting. Installation of wall surface covering, decorative texturing, taping,

and finishing of drywall. This also includes the application of sealants in connection with the above;

- C-33a **Wall coverings contractor.** To prepare surfaces and install wall covering materials such as vinyls, wallpapers, wood veneer, cloth fabric, and fibrous type coverings;
- C-33b **Taping contractor.** To fill and tape joints and indentations in wallboard so that a smooth surface is obtained to serve as a base for future finishes;
- C-33c **Surface treatment contractor.** To treat surfaces by using, but not limited to, sandblasting, waterblasting, power cleaning, or steam cleaning. This also includes the application of sealants in connection with the above;
- C-34 **Soil stabilization contractor.** To stabilize earth through the use of cement and/or chemical pressure grouting;
- C-35 **Pile driving, pile and caisson drilling, and foundation contractor.** To drill holes for pilings and caissons and to drive piles and set caissons including cutting piles and capping same. To compact earth for foundations by vibrafloater or similar systems;
- C-36 **Plastering contractor.** To apply gypsum plaster, cement, and acoustical plaster or any combination of materials common to the plastering industry to any surface which offers either a mechanical or suction type bond by spray or trowel; to apply lath or any other material that will provide a bond for the plaster including spray on, multipurpose, acoustic, insulation, and fire retardant systems; and to apply cementitious fire proofing systems;
- C-36a **Lathing contractor.** To apply wood and metal lath, or any other materials which provide a key or suction base for the support of plaster coatings; including the installation of metal framing for the support of lath;

- C-37 **Plumbing contractor.** To install, repair, or alter complete plumbing systems which shall include supply water piping systems, hot water piping systems which includes, but is not limited to, heat pump water heaters, and hot water supply boilers with a heat input of 200,000 BTU/h or less, waste water piping systems, fuel gas piping systems, waste water treatment systems, and other fluid piping systems; the equipment, backflow prevention assemblies, instrumentation, non-electric controls, and the fixture for these systems and the venting for waste water piping systems and fuel gas piping systems; for any purpose in connection with the use and occupancy of buildings, structures, works, and premises where people or animals live, work, and assemble; including piping for vacuum, air, and medical gas systems, spas and swimming pools, lawn sprinkler systems, irrigation systems, sewer lines and related sewage disposal work performed within property lines, fire protection sprinkler systems when supervised by licensed mechanical engineers or licensed fire protection contractors, and solar hot water heating systems, and the trenching, backfilling, patching, and surface restoration in connection therewith;
- C-37a **Sewer and drain line contractor.** To install sewer line from house to city sewer with connections; and to install septic tanks, package sewage treatment plants, and related work, within property lines;
- C-37b **Irrigation and lawn sprinkler systems contractor.** To install all piping and fittings, pressure regulators, backflow prevention devices, and irrigation control electrical wiring that will carry twenty-four volts or less, as required to provide irrigation systems for, but not limited to lawns, parks, playgrounds, highway right of ways, golf courses, and school facilities; including installation of automatic or manual controls in relation to an irrigation system;
- C-37c **Vacuum and air systems contractor.** To install tubing for air systems, pneumatic conveyor systems, and central vacuum systems for conveying material;

- C-37d **Water chlorination and sanitation contractor.** To chlorinate or sanitize water or water lines; repair water lines and additions to water lines; and check bacterial count in the water or water lines;
- C-37e **Treatment and pumping facilities contractor.** To install, assemble, alter, repair and maintain the equipment and piping systems in connection with wastewater treatment, water distribution, and water pumping facilities;
- C-37f **Fuel dispensing contractor.** To install, remove, and repair gas tanks, hazardous waste storage tanks, pumps, hoists, or other related equipment for facilities such as, but not limited to, service stations;
- C-38 **Post tensioning contractor.** To apply compression to concrete structures or various components by the use of steel bars or wires; and to bring bars or wires to proper tension after the structures or components are built or placed;
- C-40 **Refrigeration contractor.** To assemble and install devices, machinery, and units, including temperature insulation units, ducts, blowers, registers, humidity, and thermostatic controls for the control of air temperature below fifty degrees Fahrenheit in refrigerators, refrigerator rooms, and insulated refrigerator spaces; and to construct walk-in refrigerator boxes;
- C-40a **Prefabricated refrigerator panels contractor.** To install prefabricated refrigerator panels;
- C-41 **Reinforcing steel contractor.** To fabricate, place and tie steel reinforcing bars (rods), of any profile, perimeter, or cross-section, that are or may be used to reinforce concrete buildings and structures;
- C-42 **Roofing contractor.** To install roofing to an acceptable surface and provide a weather tight covering using metal; composition and cementitious shingles; wood shingles and shakes; concrete, clay, and other types of tile; built-up, modified bitumen, single ply, and fluid type systems; and other roofing materials including

spray urethane foam, asphalt, and liquid (cutback) asphalt. To apply protective or reflective roofing, or both. To apply deck coatings and top coatings. To also install roof flashing in connection with all of the above;

- C-42a **Aluminum and other metal shingles contractor.** To install aluminum and other types of metal shingles so that an acceptable watertight surface is obtained;
- C-42b **Wood shingles and wood shakes contractor.** To install wood shingles and shakes; including all flashing materials to form a watertight surface, staining in conjunction with shingle and shake application, and application of water repellent materials;
- C-42c **Concrete and clay tile contractor.** To lay concrete and clay tile including any underlay, purlins, or nailer strips in conjunction therewith to form a watertight surface;
- C-42e **Urethane foam contractor.** To prepare roof surface and apply urethane foam and top coating in connection therewith to form a watertight roof surface;
- C-42g **Roof coatings contractor.** Application of roof coatings for waterproofing and reflective purposes; including any surface preparation necessary for these applications;
- C-43 **Sewer, sewage disposal, drain, and pipe laying contractor.** To construct concrete and masonry sewers, packaged sewer disposal plants, sewage lift stations, septic tanks, and appurtenances thereto; to lay all types of piping for storm drains, water, and gas lines, irrigation and sewers, manholes in connection with the above work; and repairing and reconditioning of the pipelines, including the excavation, grading, trenching, backfilling, paving, and surfacing in connection therewith;
- C-43a **Reconditioning and repairing pipeline contractor.** To repair or recondition water and sewer lines manually or by remote control in conformity with county sewer or with water supply departments specifications;

- C-44 **Sheet metal contractor.** To fabricate, assemble and install cornices, flashings, gutters, downspouts, kitchen and laboratory equipment, duct work, metal flues, and free standing fireplaces and chimneys; and to install pre-manufactured sheet metal products such as metal chutes, lockers, shelving, louvres, nonbearing metal partitions, metal siding and roofing, and other sheet metal items common to the trade, and facsimile items such as plastic skylights, fiberglass ducts and fittings, including installation of metal awnings, canopies, patio covers, and seamless metal gutters;
- C-44a **Gutters contractor.** To fabricate and install gutters and downspouts;
- C-44b **Awnings and patio cover contractor.** To fabricate and install awnings and patio covers.
- C-48 **Structural steel contractor.** To fabricate and erect structural steel shapes, bars, rods, and plates of any profile, perimeter, or cross-section, that are or may be used as structural members for buildings and structures; including riveting, bolting, welding, and rigging in connection therewith. Erection of metal buildings, passenger loading bridges, metal roofing and metal siding installed on steel framing, mechanical, overhead, sliding and roll-up steel doors, and grills and bars over windows;
- C-48a **Steel door contractor.** To install and repair mechanical, overhead, sliding and roll-up steel doors;
- C-49 **Swimming pool contractor.** To construct and repair concrete, gunite, metal, or plastic type pools, whirlpool baths, hot tubs, jacuzzies, pool decks, and walkways; including, but not limited to, installation and repair of water and gas service lines, from closest point of service to pool equipment, pool piping, fittings, back flow prevention devices, pumps, heaters, chlorine dispensers, pool plastering and other types of interior finishing and sealing, ceramic tile, coping, swimming pool accessories and safety devices, fences for protective purposes if in original contract and excavation and grading in connection with swimming pool construction;

- C-49a **Swimming pool service contractor.** Repair and replacement of pumps, filters, heaters and related circulation piping for swimming pools, whirlpool baths, and jacuzzis; acid washing or repainting of swimming pool, whirlpool bath, and jacuzzi interiors; and repairs to pool tile, coping stones, plaster, and decks;
- C-49b **Hot tub and pool contractor.** To install hot tubs, saunas, and vinyl or fabric lined pools to include water catchment, storage, and transmission;
- C-51 **Tile contractor.** To prepare the base upon which ceramic, mosaic, granite, terrazzo, and other tile work, including all pseudo tile and marble or cultured marble products, will adhere by suction, fasteners, or by adhesives; and to install these products;
- C-51a **Cultured marble contractor.** To prepare the base and install cultured marble or synthetic marble products;
- C-51b **Terrazzo contractor.** To place and finish terrazzo and liquid membrane with terrazzo chips;
- C-52 **Ventilating and air conditioning contractor.** To fabricate, assemble, and install warm-air heating and air cooling systems including heating and cooling solar systems, complete ventilating systems and complete air conditioning systems including, but not limited to, piping, controls (other than electrical), instrumentation, building automation, energy management, and trenching, backfilling, patching, and surface restoration in connection with the installation of the air conditioning systems; and including installation of thermal and acoustical insulation necessary to maintain heat, or sound, or both, within the systems above. This also includes the installation of heat pumps related to the air conditioning system;
- C-53 **Miscellaneous retail products contractor.** To enter into contracts to install miscellaneous retail products sold by the licensee; provided that the installation work shall be subcontracted to and physically performed by appropriately

licensed contractors. The licensee shall operate as a retailer at a fixed location of 10,000 square feet or more; file a \$50,000 surety bond with the board; provide in-house financing; inform consumers that they do not physically perform the installation work and state that in all advertising; and be primarily responsible and liable for the actions of the other contractors performing the installation work.

- C-54 **Interior design contractor.** To enter into contracts to provide interior design services and perform the renovation work; provided that the renovation work shall be subcontracted to and physically performed by appropriately licensed contractors. The licensee shall inform consumers that they do not physically perform the renovation work and state that in all advertising; and be primarily responsible and liable for the actions of the other contractors performing the renovation work.
- C-55 **Waterproofing contractor.** To apply felt, glass, asphaltum, epoxy, pitch, silicone, elastomeric coatings, sheet membranes or any other materials or combination of materials to surfaces to prevent water and water vapor from penetrating and passing the materials. Work shall include, but not be limited to, waterproofing exterior walls and between slabs, both above and below grade, planter boxes, tank linings and application of tank coatings, and application to parking decks, play courts, and walking decks to form a watertight non-skid surface, but not to include the work of the C-42 roofing contractor. This also includes surface preparations of all types, caulking, sandblasting, waterblasting, power cleaning, or steam cleaning preparatory to waterproofing;
- C-56 **Welding contractor.** On-site job layout, cut, assemble and weld the metal products including, but not limited to, pipe lines, tanks, pressure vessels, guard rails, and fire escapes, by welding techniques using carbon arc, metal arc, submerged arc, flux core, resistance, and oxyacetylene processes;
- C-57 **Well contractor.** To bore, drill, excavate, case, cement, clean, and repair water wells; and to install injection wells, water well

pumps and pump controls, concrete pump base and waterline to adjacent storage tank;

- C-57a **Pumps installation contractor.** To install pumps and related equipment including controls, to wells;
- C-57b **Injection well contractor.** To install injection wells;
- C-60 **Solar power systems contractor.** To assemble and install photovoltaic panels, batteries, controls, and related low voltage D.C. wiring;
- C-61 **Solar energy systems contractor.** To assemble and install solar hot water systems in residential and commercial buildings and swimming pools, provided that this shall not include the installation of heat pumps or water heaters. To install solar heating and cooling systems in residential, commercial, and industrial buildings;
- C-61a **Solar hot water systems contractor.** To assemble and install collectors, storage vessels, controls, pumps, and piping in connection therewith;
- C-61b **Solar heating and cooling systems contractor.** To install solar heating and cooling systems; provided that all specialty work requiring a license is subcontracted to contractors licensed to perform that work;
- C-62 **Pole and line contractor.** To dress, ground, anchor, and erect poles that will carry high voltage (600 volts phase to phase or more) electrical wires; and to connect and string electrical wires, fixtures, and apparatus to and between the poles, including installation of pole-mounted transformers. Work shall include street and highway lighting and traffic signal systems, and the work of the C-63 high voltage electrical contractor;
- C-62a **Pole Contractor.** To strengthen poles by injecting into or encasing poles with fiberglass, polyurethane, epoxy, or similar materials; or to reinforce poles using steel trusses or braces.

- C-63 **High voltage electrical contractor.** To place, install, erect, or connect any electrical wires, fixtures, appliances, apparatus, conduits, raceways, and to do trenching, backfilling, patching, and surface restoration in connection with the installation of conduits and lines which transmit, transform, or utilize electrical energy of more than 600 volts phase to phase;
- C-68 **Classified specialist.** The performance of construction work requiring unique or special skill which is not related to or does not completely fall within any of the listed classifications; provided that the new classification is in the best interest of the public as determined by the board, and the specialist meets the standards and requirements set by law for licensing.