

**A BILL FOR AN ACT**

RELATING TO THE GENERAL EXCISE TAX.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 237-1, Hawaii Revised Statutes, is  
2 amended by adding a new definition to be appropriately  
3 inserted and to read as follows:

4           "Eating or drinking retailer" means a licensed retailer  
5 engaged in the temporary or permanent activity of selling food  
6 or beverage for retail, and includes traditional service and  
7 fast-food restaurants, carnivals, fairs, hot dog carts, lunch  
8 wagons, grocery or department stores, bakeries, concession  
9 stands, or the like, that engage in the sale of ready-to-eat  
10 foods."

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

13          "**§237-4 "Wholesaler", "jobber", defined.** "Wholesaler"  
14 or "jobber" applies only to a person making sales at  
15 wholesale. Only the following are sales at wholesale:

- 16          (1) Sales to a licensed retail merchant, jobber, or other  
17             licensed seller for purposes of resale;  
18          (2) Sales to a licensed manufacturer of material or

1 commodities which are to be incorporated by the  
2 manufacturer into a finished or saleable product  
3 (including the container or package in which the product  
4 is contained) during the course of its preservation,  
5 manufacture, or processing, including preparation for  
6 market, and which will remain in such finished or  
7 saleable product in such form as to be perceptible to the  
8 senses, which finished or saleable product is to be sold  
9 and not otherwise used by the manufacturer;

10 (3) Sales to a licensed producer or cooperative association  
11 of materials or commodities which are to be incorporated  
12 by the producer or by the cooperative association into a  
13 finished or saleable product which is to be sold and not  
14 otherwise used by the producer or cooperative  
15 association, including specifically materials or  
16 commodities expended as essential to the planting,  
17 growth, nurturing, and production of commodities which  
18 are sold by the producer or by the cooperative  
19 association;

20 (4) Sales to a licensed contractor, of material or  
21 commodities which are to be incorporated by the  
22 contractor into the finished work or project required by  
23 the contract and which will remain in such finished work  
24 or project in such form as to be perceptible to the  
25 senses;

26 (5) Sales to a licensed producer, or to a cooperative

1 association described in section 237-23(a)(7) for sale to  
2 such producer, or to a licensed person operating a feed  
3 lot, of poultry or animal feed, hatching eggs, semen,  
4 replacement stock, breeding services for the purpose of  
5 raising or producing animal or poultry products for  
6 disposition as described in section 237-5 or to be  
7 incorporated in a manufactured product as described in  
8 paragraph (2) or for the purpose of breeding, hatching,  
9 milking, or egg laying other than for the customer's own  
10 consumption of the meat, poultry, eggs, or milk so  
11 produced; provided that in the case of a feed lot  
12 operator, only the segregated cost of the feed furnished  
13 by the feed lot operator as part of the feed lot  
14 operator's service to a licensed producer of poultry or  
15 animals to be butchered or to a cooperative association  
16 described in section 237-23(a)(7) of such licensed  
17 producers shall be deemed to be a sale at wholesale; and  
18 provided further that any amount derived from the  
19 furnishing of feed lot services, other than the  
20 segregated cost of feed, shall be deemed taxable at the  
21 service business rate. This paragraph shall not apply to  
22 the sale of feed for poultry or animals to be used for  
23 hauling, transportation, or sports purposes;

24 (6) Sales to a licensed producer, or to a cooperative  
25 association described in section 237-23(a)(7) for sale to  
26 the producer, of seed for producing agricultural

- 1 products, or bait for catching fish (including the  
2 catching of bait for catching fish), which agricultural  
3 products or fish are to be disposed of as described in  
4 section 237-5 or to be incorporated in a manufactured  
5 product as described in paragraph (2);
- 6 (7) Sales to a licensed producer, or to a cooperative  
7 association described in section 237-23(a)(7) for sale to  
8 such producer; of polypropylene shade cloth; of polyfilm;  
9 of polyethylene film; of cartons and such other  
10 containers, wrappers, and sacks, and binders to be used  
11 for packaging eggs, vegetables, fruits, and other  
12 agricultural products; of seedlings and cuttings for  
13 producing nursery plants; or of chick containers; which  
14 cartons and such other containers, wrappers, and sacks,  
15 binders, seedlings, cuttings, and containers are to be  
16 used as described in section 237-5, or to be incorporated  
17 in a manufactured product as described in paragraph (2);
- 18 (8) Sales of tangible personal property to a licensed person  
19 engaged in the service business; provided that (A) the  
20 property is not consumed or incidental to the performance  
21 of the services; (B) there is a resale of the article at  
22 the retail rate of four per cent; and (C) the resale of  
23 the article is separately charged or billed by the person  
24 rendering the services;
- 25 (9) Sales to a licensed leasing company of capital goods  
26 which are thereafter leased as a service to others.

1 Capital goods means goods which have a depreciable life  
2 and which are purchased by the leasing company for lease  
3 to its customers.

4 (10) Sales to an eating or drinking retailer of any  
5 nonreturnable food or beverage container, including any  
6 container, wrapper, package, attached or unattached lid  
7 or cover that is:

8 (A) Usually discarded after its initial use;

9 (B) Generally known and most commonly used to contain  
10 food or beverage for transfer or delivery; and

11 (C) Which is used to contain food or beverage for  
12 transfer or delivery by an eating or drinking  
13 retailer to a purchaser for take-out purchases, home  
14 transfer, transfer within a traditional service  
15 restaurant or fast-food restaurant, or any  
16 combination thereof.

17 (11) Sales of bulk or prepackaged single-serving packets of  
18 condiments to an eating or drinking retailer which are  
19 used, resold, or provided to customers free of charge by  
20 the eating or drinking retailer.

21 If the use tax law is finally held by a court of  
22 competent jurisdiction to be unconstitutional or invalid  
23 insofar as it purports to tax the use or consumption of  
24 tangible personal property imported into the State in  
25 interstate or foreign commerce or both, wholesalers and  
26 jobbers shall be taxed thereafter under this chapter in

1 accordance with the following definition (which shall  
2 supersede the preceding paragraph otherwise defining  
3 "wholesaler" or "jobber"): "Wholesaler" or "jobber" means a  
4 person, or a definitely organized division thereof, definitely  
5 organized to render and rendering a general distribution  
6 service which buys and maintains at the person's place of  
7 business a stock or lines of merchandise which the person  
8 distributes; and which, through salespersons, advertising, or  
9 sales promotion devices, sells to licensed retailers, to  
10 institutional or licensed commercial or industrial users, in  
11 wholesale quantities and at wholesale rates. A corporation  
12 deemed not to be carrying on a trade or business in this State  
13 under section 235-6 shall nevertheless be deemed to be a  
14 wholesaler and shall be subject to the tax imposed by this  
15 chapter."

16 SECTION 2. New statutory material is underscored.

17 SECTION 3. This Act shall take effect upon its approval.

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19 INTRODUCED BY: \_\_\_\_\_