

REVISED:
1ST DRAFT DATE:

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A BILL FOR AN ACT

RELATING TO STREAMLINED SALES AND USE TAX.

SECTION 1. The purpose of this Act is to adopt changes to Hawaii's tax law that will allow Hawaii to participate in the Streamlined Sales and Use Tax Agreement. In 2003, the State of Hawaii became a participating member of the National Streamlined Sales Tax Project through the enactment of the Hawaii Simplified Sales and Use Tax Administration Act. (Act 173, Session Laws of Hawaii 2003).

In furtherance of our State's efforts to comply with the terms and conditions of the conforming legislation reflected in the Streamlined Sales Tax Project's model Agreement and Act, the Hawaii State Legislature enacted Act 3, Special Session Laws of Hawaii 2005. Act 3, in part, establishes a Technical Advisory Group to assist the State of Hawaii Department of Taxation in identifying and resolving issues necessary for Streamlined Sales Tax Project compliance. In addition, a Joint House-Senate Legislative Oversight Committee has also been formed to provide additional tax policy support and guidance. This Act is a culmination of these efforts.

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In order to participate in the Streamlined Sales and Use Tax Agreement, Hawaii must amend its tax law in conformity with the Streamlined Sales and Use Tax Agreement. To conform, Hawaii must adopt single rate of general excise tax, Hawaii's substitute for a sales tax. In accordance with advice received from the Streamlined Sales Tax Governing Board and COST, a national organization representing businesses, this was accomplished by moving the one-half of one percent tax rate for wholesale transactions to a new chapter; adding on new chapter on the taxation of imports of property, services, and contracting; moving the 0.15 percent tax on insurance producers to a new chapter; and eliminating the tax on businesses owned by disabled persons. The Act also provides for destination-based sourcing and amnesty.

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

1 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§ 46- County Compliance with the Streamlined Sales and
5 Use Tax Agreement. The counties shall not adopt any law or
6 interpret any law in such a manner that violates the provisions

1 of the Streamlined Sales and Use Tax Agreement promulgated by
2 the Streamlined Sales Tax Governing Board, Inc."

3 SECTION 3. Chapter 237, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 **"237-000. GENERAL SOURCING RULES.**

7 (A) The retail sale, excluding lease or rental, of a
8 product shall be sourced as follows:

9 (1) When the product is received by the purchaser at a
10 business location of the seller, the sale is
11 sourced to that business location.

12 (2) When the product is not received by the purchaser
13 at a business location of the seller, the sale is
14 sourced to the location where receipt by the
15 purchaser (or the purchaser's donee, designated
16 as such by the purchaser) occurs, including the
17 location indicated by instructions for delivery
18 to the purchaser (or donee), known to the seller.

19 (3) When subsections (A)(1) and (A)(2) do not apply,
20 the sale is sourced to the location indicated by
21 an address for the purchaser that is available
22 from the business records of the seller that are
23 maintained in the ordinary course of the seller's

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1 business when use of this address does not
2 constitute bad faith.

3 (4) When subsections (A) (1), (A) (2), and (A) (3) do not
4 apply, the sale is sourced to the location
5 indicated by an address for the purchaser obtained
6 during the consummation of the sale, including
7 the address of a purchaser's payment instrument,
8 if no other address is available, when use of
9 this address does not constitute bad faith.

10 (5) When none of the previous rules of subsections
11 (A) (1), (A) (2), (A) (3), or (A) (4) apply, including
12 the circumstance in which the seller is without
13 sufficient information to apply the previous
14 rules, then the location will be determined by
15 the address from which tangible personal property
16 was shipped, from which the digital good or the
17 computer software delivered electronically was
18 first available for transmission by the seller,
19 or from which the service was provided
20 (disregarding for these purposes any location
21 that merely provided the digital transfer of the
22 product sold).

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1 (B) The lease or rental of tangible personal
2 property, other than property identified in
3 subsection (C) or subsection (D), shall be
4 sourced as follows:

5 (1) For a lease or rental that requires recurring
6 periodic payments, the first periodic payment is
7 sourced the same as a retail sale in accordance
8 with the provisions of subsection (A). Periodic
9 payments made subsequent to the first payment are
10 sourced to the primary property location for each
11 period covered by the payment. The primary
12 property location shall be as indicated by an
13 address for the property provided by the lessee
14 that is available to the lessor from its records
15 maintained in the ordinary course of business,
16 when use of this address does not constitute bad
17 faith. The property location shall not be altered
18 by intermittent use at different locations, such
19 as use of business property that accompanies
20 employees on business trips and service calls.

21 (2) For a lease or rental that does not require
22 recurring periodic payments, the payment is

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1 sourced the same as a retail sale in accordance
2 with the provisions of subsection (A).

3 (3) This subsection does not affect the imposition or
4 computation of general excise or use tax on leases
5 or rentals based on a lump sum or accelerated
6 basis, or on the acquisition of property for
7 lease.

8 (C) The lease or rental of motor vehicles, trailers,
9 semi-trailers, or aircraft that do not qualify as
10 transportation equipment, as defined in
11 subsection (D), shall be sourced as follows:

12 (1) For a lease or rental that requires recurring
13 periodic payments, each periodic payment is
14 sourced to the primary property location. The
15 primary property location shall be as indicated
16 by an address for the property provided by the
17 lessee that is available to the lessor from its
18 records maintained in the ordinary course of
19 business, when use of this address does not
20 constitute bad faith. This location shall not be
21 altered by intermittent use at different
22 locations.

23 (2) For a lease or rental that does not require
24 recurring periodic payments, the payment is

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1 sourced the same as a retail sale in accordance
2 with the provisions of subsection (A).

3 (3) This subsection does not affect the imposition or
4 computation of general excise or use tax on leases
5 or rentals based on a lump sum or accelerated
6 basis, or on the acquisition of property for
7 lease.

8 (D) The retail sale, including lease or rental, of
9 transportation equipment shall be sourced the
10 same as a retail sale in accordance with the
11 provisions of subsection (A), notwithstanding the
12 exclusion of lease or rental in subsection (A).

13 "Transportation equipment" means any of the
14 following:

15 (1) Locomotives and railcars that are utilized for the
16 carriage of persons or property in interstate
17 commerce.

18 (2) Trucks and truck-tractors with a Gross Vehicle
19 Weight Rating (GVWR) of 10,001 pounds or greater,
20 trailers, semi-trailers, or passenger buses that
21 are:

22 (a) Registered through the International
23 Registration Plan; and

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1 (b) Operated under authority of a carrier
2 authorized and certificated by the U.S.
3 Department of Transportation or another
4 federal authority to engage in the
5 carriage of persons or property in
6 interstate commerce.

7 (3) Aircraft that are operated by air carriers
8 authorized and certificated by the U.S.
9 Department of Transportation or another federal
10 or a foreign authority to engage in the carriage
11 of persons or property in interstate or foreign
12 commerce.

13 (4) Containers designed for use on and component
14 parts attached or secured on the items set forth
15 in subsections (D)(1) through (D)(3).

16 "237-000. GENERAL SOURCING DEFINITIONS. For the purposes
17 of Section 237-000, subsection (A), the terms "receive" and
18 "receipt" mean:

- 19 A. Taking possession of tangible personal property,
20 B. Making first use of services, or
21 C. Taking possession or making first use of digital goods,
22 whichever comes first.

1 The terms "receive" and "receipt" do not include possession by a
2 shipping company on behalf of the purchaser.

3

4 **"237-00 TELECOMMUNICATION SOURCING RULE."**

5 (A) Except for the defined telecommunication services in
6 subsection (C), the sale of telecommunication service
7 sold on a call-by-call basis shall be sourced to (i)
8 each level of taxing jurisdiction where the call
9 originates and terminates in that jurisdiction or (ii)
10 each level of taxing jurisdiction where the call either
11 originates or terminates and in which the service
12 address is also located.

13 (B) Except for the defined telecommunication services in
14 subsection (C), a sale of telecommunications services
15 sold on a basis other than a call-by-call basis, is
16 sourced to the customer's place of primary use.

17 (C) The sale of the following telecommunication services
18 shall be sourced to each level of taxing jurisdiction
19 as follows:

20 (1) A sale of mobile telecommunications services
21 other than air-to-ground radiotelephone service
22 and prepaid calling service, is sourced to the

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1 customer's place of primary use as required by
2 the Mobile Telecommunications Sourcing Act.

3 (2) A sale of post-paid calling service is sourced to
4 the origination point of the telecommunications
5 signal as first identified by either (i) the
6 seller's telecommunications system, or (ii)
7 information received by the seller from its
8 service provider, where the system used to
9 transport such signals is not that of the seller.

10 (3) (Effective through December 31, 2007) A sale of
11 prepaid calling service is sourced in accordance
12 with section 237-00. Provided however, in the
13 case of a sale of mobile telecommunications
14 service that is a prepaid telecommunications
15 service, the rule provided in Section 237-00,
16 subsection (A)(5) shall include as an option the
17 location associated with the mobile telephone
18 number.

19 (4) (Effective on and after January 1, 2008) A sale
20 of prepaid calling service or a sale of a prepaid
21 wireless calling service is sourced in accordance
22 with Section 237-00. Provided however, in the

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1 case of a sale of prepaid wireless calling
2 service, the rule provided in Section 237-00,
3 subsection (A) (5) shall include as an option the
4 location associated with the mobile telephone
5 number.

6 (5) A sale of a private communication service is
7 sourced as follows:

8 (a) Service for a separate charge related to a
9 customer channel termination point is
10 sourced to each level of jurisdiction in
11 which such customer channel termination
12 point is located.

13 (b) Service where all customer termination
14 points are located entirely within one
15 jurisdiction or levels of jurisdiction is
16 sourced in such jurisdiction in which the
17 customer channel termination points are
18 located.

19 (c) Service for segments of a channel between
20 two customer channel termination points
21 located in different jurisdictions and
22 which segment of channel are separately

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1 charged is sourced fifty percent in each
2 level of jurisdiction in which the customer
3 channel termination points are located.

4 Service for segments of a channel located in more than one
5 jurisdiction or levels of jurisdiction and which segments are
6 not separately billed is sourced in each jurisdiction based on
7 the percentage determined by dividing the number of customer
8 channel termination points in such jurisdiction by the total
9 number of customer channel termination points.

10

11 "237-00 TELECOMMUNICATION SOURCING DEFINITIONS (Effective
12 through December 31, 2007). For the purpose of Section 237-00,
13 the following definitions apply:

14 (A) "Air-to-Ground Radiotelephone service" means a radio
15 service, as that term is defined in 47 CFR 22.99, in
16 which common carriers are authorized to offer and
17 provide radio telecommunications service for hire to
18 subscribers in aircraft.

19 (B) "Call-by-call Basis" means any method of charging for
20 telecommunications services where the price is
21 measured by individual calls.

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1 (C) "Communications Channel" means a physical or virtual
2 path of communications over which signals are
3 transmitted between or among customer channel
4 termination points.

5 (D) "Customer" means the person or entity that contracts
6 with the seller of telecommunications services. If the
7 end user of telecommunications services is not the
8 contracting party, the end user of the
9 telecommunications service is the customer of the
10 telecommunication service, but this sentence only
11 applies for the purpose of sourcing sales of
12 telecommunications services under Section 237-00.

13 "Customer" does not include a reseller of
14 telecommunications service or for mobile
15 telecommunications service of a serving carrier under
16 an agreement to serve the customer outside the home
17 service provider's licensed service area.

18 (E) "Customer Channel Termination Point" means the
19 location where the customer either inputs or receives
20 the communications.

21 (F) "End user" means the person who utilizes the
22 telecommunication service. In the case of an entity,

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1 "end user" means the individual who utilizes the
2 service on behalf of the entity.

3 (G) "Home service provider" means the same as that term is
4 defined in Section 124(5) of Public Law 106-252
5 (Mobile Telecommunications Sourcing Act).

6 (H) "Mobile telecommunications service" means the same as
7 that term is defined in Section 124(7) of Public Law
8 106-252 (Mobile Telecommunications Sourcing Act).

9 (I) "Place of primary use" means the street address
10 representative of where the customer's use of the
11 telecommunications service primarily occurs, which
12 must be the residential street address or the primary
13 business street address of the customer. In the case
14 of mobile telecommunications services, "place of
15 primary use" must be within the licensed service area
16 of the home service provider.

17 (J) "Post-paid calling service" means the
18 telecommunications service obtained by making a
19 payment on a call-by-call basis either through the use
20 of a credit card or payment mechanism such as a bank
21 card, travel card, credit card, or debit card, or by
22 charge made to a telephone number which is not

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1 associated with the origination or termination of the
2 telecommunications service. A post-paid calling
3 service includes a telecommunications service that
4 would be a prepaid calling service except it is not
5 exclusively a telecommunication service.

6 (K) "Prepaid calling service" means the right to access
7 exclusively telecommunications services, which must be
8 paid for in advance and which enables the origination
9 of calls using an access number or authorization code,
10 whether manually or electronically dialed, and that is
11 sold in predetermined units or dollars of which the
12 number declines with use in a known amount.

13 (L) "Private communication service" means a
14 telecommunication service that entitles the customer
15 to exclusive or priority use of a communications
16 channel or group of channels between or among
17 termination points, regardless of the manner in which
18 such channel or channels are connected, and includes
19 switching capacity, extension lines, stations, and any
20 other associated services that are provided in
21 connection with the use of such channel or channels.

22 (M) "Service address" means:

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1 (1) The location of the telecommunications equipment
2 to which a customer's call is charged and from
3 which the call originates or terminates,
4 regardless of where the call is billed or paid.

5 (2) If the location in subsection (M)(1) is not
6 known, service address means the origination
7 point of the signal of the telecommunications
8 services first identified by either the seller's
9 telecommunications system or in information
10 received by the seller from its service provider,
11 where the system used to transport such signals
12 is not that of the seller.

13 (3) If the location in subsection (M)(1) and
14 subsection (M)(2) are not known, the service
15 address means the location of the customer's
16 place of primary use.

17 "237-00 TELECOMMUNICATION SOURCING DEFINITIONS (Effective
18 on and after January 1, 2008). For the purpose of Section 314,
19 the following definitions apply:

20 (A) "Air-to-Ground Radiotelephone service" means a radio
21 service, as that term is defined in 47 CFR 22.99, in
22 which common carriers are authorized to offer and

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1 provide radio telecommunications service for hire to
2 subscribers in aircraft.

3 (B) "Call-by-call Basis" means any method of charging for
4 telecommunications services where the price is
5 measured by individual calls.

6 (C) "Communications Channel" means a physical or virtual
7 path of communications over which signals are
8 transmitted between or among customer channel
9 termination points.

10 (D) "Customer" means the person or entity that contracts
11 with the seller of telecommunications services. If the
12 end user of telecommunications services is not the
13 contracting party, the end user of the
14 telecommunications service is the customer of the
15 telecommunication service, but this sentence only
16 applies for the purpose of sourcing sales of
17 telecommunications services under Section 237-00.

18 "Customer" does not include a reseller of
19 telecommunications service or for mobile
20 telecommunications service of a serving carrier under
21 an agreement to serve the customer outside the home
22 service provider's licensed service area.

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1 (E) "Customer Channel Termination Point" means the
2 location where the customer either inputs or receives
3 the communications.

4 (F) "End user" means the person who utilizes the
5 telecommunication service. In the case of an entity,
6 "end user" means the individual who utilizes the
7 service on behalf of the entity.

8 (G) "Home service provider" means the same as that term is
9 defined in Section 124(5) of Public Law 106-252
10 (Mobile Telecommunications Sourcing Act).

11 (H) "Mobile telecommunications service" means the same as
12 that term is defined in Section 124(7) of Public Law
13 106-252 (Mobile Telecommunications Sourcing Act).

14 (I) "Place of primary use" means the street address
15 representative of where the customer's use of the
16 telecommunications service primarily occurs, which
17 must be the residential street address or the primary
18 business street address of the customer. In the case
19 of mobile telecommunications services, "place of
20 primary use" must be within the licensed service area
21 of the home service provider.

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1 (J) "Post-paid calling service" means the
2 telecommunications service obtained by making a
3 payment on a call-by-call basis either through the use
4 of a credit card or payment mechanism such as a bank
5 card, travel card, credit card, or debit card, or by
6 charge made to a telephone number which is not
7 associated with the origination or termination of the
8 telecommunications service. A post-paid calling
9 service includes a telecommunications service, except
10 a prepaid wireless calling service, that would be a
11 prepaid calling service except it is not exclusively a
12 telecommunication service.

13 (K) "Prepaid calling service" means the right to access
14 exclusively telecommunications services, which must be
15 paid for in advance and which enables the origination
16 of calls using an access number or authorization code,
17 whether manually or electronically dialed, and that is
18 sold in predetermined units or dollars of which the
19 number declines with use in a known amount.

20 (L) "Prepaid wireless calling service" means a
21 telecommunications service that provides the right to
22 utilize mobile wireless service as well as other non-

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1 telecommunications services, including the download of
2 digital products delivered electronically, content and
3 ancillary services, which must be paid for in advance
4 that is sold in predetermined units or dollars of
5 which the number declines with use in a known amount.

6 (M) "Private communication service" means a
7 telecommunication service that entitles the customer
8 to exclusive or priority use of a communications
9 channel or group of channels between or among
10 termination points, regardless of the manner in which
11 such channel or channels are connected, and includes
12 switching capacity, extension lines, stations, and any
13 other associated services that are provided in
14 connection with the use of such channel or channels.

15 (N) "Service address" means:
16 (1) The location of the telecommunications equipment
17 to which a customer's call is charged and from
18 which the call originates or terminates,
19 regardless of where the call is billed or paid.
20 (2) If the location in subsection (N) (1) is not
21 known, service address means the origination
22 point of the signal of the telecommunications

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1 services first identified by either the seller's
2 telecommunications system or in information
3 received by the seller from its service provider,
4 where the system used to transport such signals
5 is not that of the seller.

6 (3) If the location in subsection (N) (1) and
7 subsection (N) (2) are not known, the service
8 address means the location of the customer's
9 place of primary use."

10 SECTION 4. Section 237-4 is repealed.

11 SECTION 5. Section 237-5 is repealed.

12 SECTION 6 Section 237-13 is amended to read as follows:

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

19 [~~(1) Tax on manufacturers.~~

20 ~~(A) Upon every person engaging or continuing~~
21 ~~within the State in the business of~~
22 ~~manufacturing, including compounding, canning,~~

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1 ~~preserving, packing, printing, publishing,~~
2 ~~milling, processing, refining, or preparing for~~
3 ~~sale, profit, or commercial use, either directly~~
4 ~~or through the activity of others, in whole or in~~
5 ~~part, any article or articles, substance or~~
6 ~~substances, commodity or commodities, the amount~~
7 ~~of the tax to be equal to the value of the~~
8 ~~articles, substances, or commodities,~~
9 ~~manufactured, compounded, canned, preserved,~~
10 ~~packed, printed, milled, processed, refined, or~~
11 ~~prepared, for sale, as shown by the gross~~
12 ~~proceeds derived from the sale thereof by the~~
13 ~~manufacturer or person compounding, preparing, or~~
14 ~~printing them, multiplied by one half of one per~~
15 ~~cent.~~

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

21 ~~(C) If any person liable for the tax on~~
22 ~~manufacturers ships or transports the person's~~

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1 ~~product, or any part thereof, out of the State,~~
2 ~~whether in a finished or unfinished condition, or~~
3 ~~sells the same for delivery to points outside the~~
4 ~~State (for example, consigned to a mainland~~
5 ~~purchaser via common carrier f.o.b. Honolulu),~~
6 ~~the value of the products in the condition or~~
7 ~~form in which they exist immediately before~~
8 ~~entering interstate or foreign commerce,~~
9 ~~determined as hereinafter provided, shall be the~~
10 ~~basis for the assessment of the tax imposed by~~
11 ~~this paragraph. This tax shall be due and payable~~
12 ~~as of the date of entry of the products into~~
13 ~~interstate or foreign commerce, whether the~~
14 ~~products are then sold or not. The department~~
15 ~~shall determine the basis for assessment, as~~
16 ~~provided by this paragraph, as follows:~~
17 ~~(i) If the products at the time of their entry~~
18 ~~into interstate or foreign commerce already have~~
19 ~~been sold, the gross proceeds of sale, less the~~
20 ~~transportation expenses, if any, incurred in~~
21 ~~realizing the gross proceeds for transportation~~
22 ~~from the time of entry of the products into~~

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1 ~~interstate or foreign commerce, including~~
2 ~~insurance and storage in transit, shall be the~~
3 ~~measure of the value of the products;~~
4 ~~(ii) If the products have not been sold at the~~
5 ~~time of their entry into interstate or foreign~~
6 ~~commerce, and in cases governed by clause (i) in~~
7 ~~which the products are sold under circumstances~~
8 ~~such that the gross proceeds of sale are not~~
9 ~~indicative of the true value of the products, the~~
10 ~~value of the products constituting the basis for~~
11 ~~assessment shall correspond as nearly as possible~~
12 ~~to the gross proceeds of sales for delivery~~
13 ~~outside the State, adjusted as provided in clause~~
14 ~~(i), or if sufficient data are not available,~~
15 ~~sales in the State, of similar products of like~~
16 ~~quality and character and in similar quantities,~~
17 ~~made by the taxpayer (unless not indicative of~~
18 ~~the true value) or by others. Sales outside~~
19 ~~the State, adjusted as provided in clause (i),~~
20 ~~may be considered when they constitute the best~~

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1 ~~available data. The department shall prescribe~~
2 ~~uniform and equitable rules for ascertaining the~~
3 ~~values;~~
4 ~~(iii) At the election of the taxpayer and with~~
5 ~~the approval of the department, the taxpayer may~~
6 ~~make the taxpayer's returns under clause (i) even~~
7 ~~though the products have not been sold at the~~
8 ~~time of their entry into interstate or foreign~~
9 ~~commerce; and~~
10 ~~(iv) In all cases in which products leave the~~
11 ~~State in an unfinished condition, the basis for~~
12 ~~assessment shall be adjusted so as to deduct the~~
13 ~~portion of the value as is attributable to the~~
14 ~~finishing of the goods outside the State.]~~

15 ~~(1)(2) Tax on business of selling tangible personal property,~~
16 ~~producing.~~

17 (A) Upon every person engaging or continuing in
18 the business of selling any tangible personal
19 property ~~whatsoever~~ (not including, however,
20 bonds or other evidence of indebtedness, or
21 stocks), unless subject to tax under Chapter
22 237A, there is likewise hereby levied, and shall

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1 be assessed and collected, a tax equivalent to
2 four per cent of the gross proceeds of sales of
3 the business; ~~provided that insofar as the sale~~
4 ~~of tangible personal property is a wholesale sale~~
5 ~~under section [237-4(a)(8)(B)], the sale shall be~~
6 ~~subject to section [237-13.3. Upon~~
7 ~~every person engaging or continuing within this~~
8 ~~State in the business of a producer, the tax~~
9 ~~shall be equal to one-half of one per cent of the~~
10 ~~gross proceeds of sales of the business, or the~~
11 ~~value of the products, for sale, if sold for~~
12 ~~delivery outside the State or shipped or~~
13 ~~transported out of the State, and the value of~~
14 ~~the products shall be determined in the same~~
15 ~~manner as the value of manufactured products~~
16 ~~covered in the cases under paragraph (1)(C).]~~
17 (B) Gross proceeds of sales of tangible property,
18 unless subject to tax under Chapter 237A, in
19 interstate and foreign commerce shall constitute
20 a part of the measure of the tax imposed on
21 persons in the business of selling tangible
22 personal property, to the extent, under the

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1 conditions, and in accordance with the provisions
2 of the Constitution of the United States and the
3 Acts of the Congress of the United States which
4 may be now in force or may be hereafter adopted,
5 and whenever there occurs in the State an
6 activity to which, under the Constitution and
7 Acts of Congress, there may be attributed gross
8 proceeds of sales, the gross proceeds shall be so
9 attributed.

10 [~~(C) No manufacturer or producer, engaged in such~~
11 ~~business in the State and selling the~~
12 ~~manufacturer's or producer's products for~~
13 ~~delivery outside of the State (for example,~~
14 ~~consigned to a mainland purchaser via common~~
15 ~~carrier f.o.b. Honolulu), shall be required to~~
16 ~~pay the tax imposed in this chapter for the~~
17 ~~privilege of so selling the products, and the~~
18 ~~value or gross proceeds of sales of the products~~
19 ~~shall be included only in determining the measure~~
20 ~~of the tax imposed upon the manufacturer or~~
21 ~~producer.]~~

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1 (C) ~~(D)~~ When a manufacturer or producer, as
2 defined in section 237A-00, engaged in such
3 business in the State, also is engaged in selling
4 the manufacturer's or producer's products in the
5 State at wholesale taxed under Chapter 237A,
6 retail, or in any other manner, the tax for the
7 privilege of engaging in the business of selling
8 the products in the State shall apply to the
9 manufacturer or producer as well as the tax for
10 the privilege of manufacturing or producing in
11 the State, and the manufacturer or producer shall
12 make the returns of the gross proceeds of the
13 wholesale, retail, or other sales required for
14 the privilege of selling in the State, as well as
15 making the returns of the value or gross proceeds
16 of sales of the products required for the
17 privilege of manufacturing or producing in the
18 State. The manufacturer or producer shall pay the
19 tax imposed in this chapter for the privilege of
20 selling its products in the State, and the value
21 or gross proceeds of sales of the products, thus
22 subjected to tax, may be deducted insofar as

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1 duplicated as to the same products by the measure
2 of the tax upon the manufacturer or producer for
3 the privilege of manufacturing or producing in
4 the State under Chapter 237A; provided that no
5 producer of agricultural products who sells the
6 products to a purchaser who will process the
7 products outside the State shall be required to
8 pay the tax imposed in this chapter for the
9 privilege of producing or selling those products.
10 ~~(E)~~ (D) A taxpayer selling to a federal cost-plus
11 contractor may make the election provided for by
12 paragraph ~~(3)~~ (2) (C), and in that case the tax
13 shall be computed pursuant to the election,
14 notwithstanding this paragraph or paragraph (1)
15 to the contrary.
16 [~~(F)~~ The department, by rule, may require that a
17 seller take from the purchaser of tangible
18 personal property a certificate, in a form
19 prescribed by the department, certifying that the
20 sale is a sale at wholesale, provided that:
21 ~~(i)~~ Any purchaser who furnishes a certificate
22 shall be obligated to pay to the seller, upon

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1 ~~demand, the amount of the additional tax that is~~
2 ~~imposed upon the seller whenever the sale in fact~~
3 ~~is not at wholesale; and~~
4 ~~(ii) The absence of a certificate in itself shall~~
5 ~~give rise to the presumption that the sale is not~~
6 ~~at wholesale unless the sales of the business are~~
7 ~~exclusively at wholesale.]~~

8 (2)~~(3)~~ Tax upon contractors.

9 (A) Upon every person engaging or continuing
10 within the State in the business of
11 contracting, the tax shall be equal to four
12 per cent of the gross income of the
13 business.

14 (B) In computing the tax levied under this
15 paragraph, there shall be deducted from the
16 gross income of the taxpayer so much
17 thereof as has been included in the measure
18 of the tax levied under subparagraph (A),
19 on:

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

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

5 (iii) A specialty contractor who is not licensed
6 by the department of commerce and consumer
7 affairs pursuant to section 444-9, but who
8 performs contracting activities on federal
9 military installations and nowhere else in this
10 State;

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

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

20 (i) The gross income exempted shall constitute
21 reimbursement of costs incurred for materials,
22 plant, or equipment purchased from a taxpayer

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1 licensed under this chapter, not exceeding the
2 gross proceeds of sale of the taxpayer on account
3 of the transaction; and

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

10 (D) A person who, as a business or as a part of a
11 business in which the person is engaged, erects,
12 constructs, or improves any building or
13 structure, of any kind or description, or makes,
14 constructs, or improves any road, street,
15 sidewalk, sewer, or water system, or other
16 improvements on land held by the person (whether
17 held as a leasehold, fee simple, or otherwise),
18 upon the sale or other disposition of the land or
19 improvements, even if the work was not done
20 pursuant to a contract, shall be liable to the
21 same tax as if engaged in the business of
22 contracting, unless the person shows that at the

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1 time the person was engaged in making the
2 improvements the person intended, and for the
3 period of at least one year after completion of
4 the building, structure, or other improvements,
5 the person continued to intend to hold and not
6 sell or otherwise dispose of the land or
7 improvements. The tax in respect of the
8 improvements shall be measured by the amount of
9 the proceeds of the sale or other disposition
10 that is attributable to the erection,
11 construction, or improvement of such building or
12 structure, or the making, constructing, or
13 improving of the road, street, sidewalk, sewer,
14 or water system, or other improvements. The
15 measure of tax in respect of the improvements
16 shall not exceed the amount which would have been
17 taxable had the work been performed by another,
18 subject as in other cases to the deductions
19 allowed by subparagraph (B). Upon the election of
20 the taxpayer, this paragraph may be applied
21 notwithstanding that the improvements were not
22 made by the taxpayer, or were not made as a

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1 business or as a part of a business, or were made
2 with the intention of holding the same. However,
3 this paragraph shall not apply in respect of any
4 proceeds that constitute or are in the nature of
5 rent; all such gross income shall be taxable
6 under paragraph (9); provided that insofar as the
7 business of renting or leasing real property
8 under a lease is taxed under section 237-16.5,
9 the tax shall be levied by section 237-16.5.

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

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

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1 ~~section [237-4(a)(13)], the tax shall be subject~~
2 ~~to section [237-13.3].~~

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

8 ~~(i) Any licensed seller who furnishes a~~
9 ~~certificate shall be obligated to pay to the~~
10 ~~person rendering the amusement, upon demand, the~~
11 ~~amount of additional tax that is imposed upon the~~
12 ~~seller whenever the sale is not at wholesale; and~~
13 ~~(ii) The absence of a certificate in itself shall~~
14 ~~give rise to the presumption that the sale is not~~
15 ~~at wholesale unless the person rendering the sale~~
16 ~~is exclusively rendering the amusement at~~
17 ~~wholesale.]~~

18 (5) Tax upon sales representatives, etc. Upon
19 every person classified as a representative or
20 purchasing agent under section 237-1, engaging or
21 continuing within the State in the business of
22 performing services for another, other than as an

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1 employee, there is likewise hereby levied and
2 shall be assessed and collected a tax equal to
3 four per cent of the commissions and other
4 compensation attributable to the services so
5 rendered by the person, unless taxable under
6 chapter 237A or chapter 237B.

7 (6) Tax on service business.

8 (A) Upon every person engaging or continuing
9 within the State in any service business or
10 calling including professional services not
11 otherwise specifically taxed under this chapter,
12 chapter 237A or chapter 237B, there is likewise
13 hereby levied and shall be assessed and collected
14 a tax equal to four per cent of the gross income
15 of the business, ~~and in the case of a wholesaler~~
16 ~~under [section 237-4(a)(10)], the tax shall be~~
17 ~~equal to one-half~~
18 ~~of one per cent of the gross income of the~~
19 ~~business. Notwithstanding the foregoing, a~~
20 ~~wholesaler under section [237-4(a)(10)] shall be~~
21 ~~subject to section [237-13.3].~~

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1 ~~[(B) The department may require that the person~~
2 ~~rendering a service at wholesale take from the~~
3 ~~licensed seller a certificate, in a form~~
4 ~~prescribed by the department, certifying that the~~
5 ~~sale is a sale at wholesale, provided that:~~
6 ~~(i) Any licensed seller who furnishes a~~
7 ~~certificate shall be obligated to pay to the~~
8 ~~person rendering the service, upon demand,~~
9 ~~the amount of additional tax that is imposed~~
10 ~~upon the seller whenever the sale is not at~~
11 ~~wholesale; and~~
12 ~~(ii) The absence of a certificate in itself shall~~
13 ~~give rise to the presumption that the sale~~
14 ~~is not at~~
15 ~~wholesale unless the person rendering the sale is~~
16 ~~exclusively rendering services at wholesale.~~
17 ~~(C) Where any person engaging or continuing~~
18 ~~within the State in any service business or~~
19 ~~calling renders those services upon the order of~~
20 ~~or at the request of another taxpayer who is~~
21 ~~engaged in the service business and who, in fact,~~
22 ~~acts as or acts in the nature of an intermediary~~

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1 ~~between the person rendering those services and~~
2 ~~the ultimate recipient of the benefits of those~~
3 ~~services, so much of the gross income as is~~
4 ~~received by the person rendering the services~~
5 ~~shall be subjected to the tax at the rate of one-~~
6 ~~half of one per cent and all of the gross income~~
7 ~~received by the intermediary from the principal~~
8 ~~shall be subjected to a tax at the rate of four~~
9 ~~per cent. Where the taxpayer is subject to both~~
10 ~~this subparagraph and to the lowest tax rate~~
11 ~~under subparagraph (A), the taxpayer shall be~~
12 ~~taxed under this subparagraph. This subparagraph~~
13 ~~shall be repealed on January 1, 2006.]~~

14 ~~(D)~~ (B) Where any person is engaged in the
15 business of selling interstate or foreign common
16 carrier telecommunication services within and
17 without the State, other than as a home service
18 provider, the tax shall be imposed on that
19 portion of gross income received by a person from
20 service which is originated or terminated in this
21 State and is charged to a telephone number,
22 customer, or account in this State

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1 notwithstanding any other state law (except for
2 the exemption under section 237-23(a)(1)) to the
3 contrary. If, under the Constitution and laws of
4 the United States, the entire gross income as
5 determined under this paragraph of a business
6 selling interstate or foreign common carrier
7 telecommunication services cannot be included in
8 the measure of the tax, the gross income shall be
9 apportioned as provided in section 237-21;
10 provided that the apportionment factor and
11 formula shall be the same for all persons
12 providing those services in the State.

13 ~~(E)~~ (C) Where any person is engaged in the
14 business of a home service provider, the tax
15 shall be imposed on the gross income received or
16 derived from providing interstate or foreign
17 mobile telecommunications services to a customer
18 with a place of primary use in this State when
19 such services originate in one state and
20 terminate in another state, territory, or foreign
21 country; provided that all charges for mobile
22 telecommunications services which are billed by

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1 or for the home service provider are deemed to be
2 provided by the home service provider at the
3 customer's place of primary use, regardless of
4 where the mobile telecommunications originate,
5 terminate, or pass through; provided further that
6 the income from charges specifically derived from
7 interstate or foreign mobile telecommunications
8 services, as determined by books and records that
9 are kept in the regular course of business by the
10 home service provider in accordance with section
11 239-24, shall be apportioned under any
12 apportionment factor or formula adopted under
13 section 237-13(6)(D). Gross income shall not
14 include:

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

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

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1 (iii) Gross receipts from mobile
2 telecommunications services taxed under section
3 237-13.8; and
4 (iv) Gross receipts of a home service provider
5 acting as a serving carrier providing mobile
6 telecommunications services to another home
7 service provider's customer. For the purposes of
8 this paragraph, "charges for mobile
9 telecommunications services", "customer", "home
10 service provider", "mobile telecommunications
11 services", "place of primary use", and
12 "serving carrier" have the same meaning as in
13 section 239-22.

14 [~~(7) Tax on insurance producers. Upon every~~
15 ~~person engaged as a licensed producer pursuant to~~
16 ~~chapter 431, there is hereby levied and shall be~~
17 ~~assessed and collected a tax equal to 0.15 per~~
18 ~~cent of the commissions due to that activity.]~~

19 [~~(8) Tax on receipts of sugar benefit payments.~~
20 ~~Upon the amounts received from the United States~~
21 ~~government by any producer of sugar (or the~~
22 ~~producer's legal representative or heirs), as~~

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1 ~~defined under and by virtue of the Sugar Act of~~
2 ~~1948, as amended, or other Acts of the Congress~~
3 ~~of the United States relating thereto, there is~~
4 ~~hereby levied a tax of one half of one per cent~~
5 ~~of the gross amount received; provided that the~~
6 ~~tax levied hereunder on any amount so received~~
7 ~~and actually disbursed to another by a producer~~
8 ~~in the form of a benefit payment shall be paid by~~
9 ~~the person or persons to whom the amount is~~
10 ~~actually disbursed, and the producer actually~~
11 ~~making a benefit payment to another shall be~~
12 ~~entitled to claim on the producer's return a~~
13 ~~deduction from the gross amount taxable hereunder~~
14 ~~in the sum of the amount so disbursed. The~~
15 ~~amounts taxed under this paragraph shall not be~~
16 ~~taxable under any other paragraph, subsection, or~~
17 ~~section of this chapter.]~~

18 ~~(9)~~ (7) Tax on other business. Upon every person
19 engaging or continuing within the State in any
20 business, trade, activity, occupation, or calling
21 not included in the preceding paragraphs or any
22 other provisions of this chapter, there is

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1 likewise hereby levied and shall be assessed and
2 collected, a tax equal to four per cent of the
3 gross income thereof. In addition, the rate
4 prescribed by this paragraph shall apply to a
5 business taxable under one or more of the
6 preceding paragraphs or other provisions of this
7 chapter, as to any gross income thereof not taxed
8 thereunder as gross income or gross proceeds of
9 sales or by taxing an equivalent value of
10 products, unless specifically exempted or subject
11 to tax under chapter 237A or chapter 237B.

12 SECTION 7. Section 237-13.3 is repealed.

13 SECTION 8. Section 237-13.5 is repealed.

14 SECTION 9. Section 237-15 is repealed.

15 SECTION 10. Section 237-18 is amended to read as follows:

16 (a) Where a coin operated device produces gross income which is
17 divided between the owner or operator of the device, on the one
18 hand, and the owner or operator of the premises where the device
19 is located, on the other hand, the tax imposed by this chapter
20 shall apply to each such person with respect to the person's
21 portion of the proceeds, and no more.

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1 (b) Where gate receipts or other admissions are divided between
2 the person furnishing or producing a play, concert, lecture,
3 athletic event, or similar spectacle (including any motion
4 picture showing) on the one hand, and a promoter (including any
5 proprietor or other operator of a motion picture house) offering
6 the spectacle to the public, on the other hand, the tax imposed
7 by this chapter, if the promoter is subject to the tax imposed
8 by this chapter, shall apply only to the promoter measured by
9 the whole of the proceeds, and the promoter shall be authorized
10 to deduct and withhold from the portion of the proceeds payable
11 to the person furnishing or producing the spectacle the amount
12 of the tax payable by the person upon such portion. No tax shall
13 apply to a promoter with respect to such portion of the proceeds
14 as is payable to a person furnishing or producing the spectacle,
15 who is exempted by section 237-23 from taxation upon such
16 activity.

17 ~~(c) Where, through the activity of a person taxable under~~
18 ~~section 237-13(6), a product has been milled, processed, or~~
19 ~~otherwise manufactured upon the order of another taxpayer who is~~
20 ~~a manufacturer taxable upon the value of the entire manufactured~~
21 ~~products, which consists in part of the value of the services~~
22 ~~taxable under section 237-13(6), so much gross income as is~~

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1 ~~derived from the rendering of the services shall be subjected to~~
2 ~~tax on the person rendering the services at the rate of one half~~
3 ~~of one per cent, and the value of the entire product shall be~~
4 ~~included in the measure of the tax imposed on the other taxpayer~~
5 ~~as elsewhere provided.~~

6 ~~(d) Where, through the activity of a person taxable under~~
7 ~~section 237-13(6), there have been rendered to a cane planter~~
8 ~~services consisting in the harvesting or hauling of the cane, or~~
9 ~~consisting in road maintenance, under a contract between the~~
10 ~~person rendering the services and the cane planter, covering the~~
11 ~~services and also the milling of the sugar, the services of~~
12 ~~harvesting and hauling the cane and road maintenance shall be~~
13 ~~treated the same as the service of milling the cane, as provided~~
14 ~~by subsection (c), and the value of the entire product,~~
15 ~~manufactured or sold for the cane planter under the contract,~~
16 ~~shall be included in the measure of the tax imposed on the~~
17 ~~persons elsewhere provided.~~

18 (e) Where [~~insurance agents, including general agents,~~
19 ~~subagents, or solicitors, who are not employees and are licensed~~
20 ~~pursuant to chapter 431, or]~~ real estate brokers or
21 salespersons, who are not employees and are licensed pursuant to
22 chapter 467, produce commissions which are divided between [such

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1 ~~general agents, subagents, or solicitors, or between~~ such real
2 estate brokers or salespersons, [~~as the case may be,~~] the tax
3 levied under section 237-13-~~(6)~~ (5) as to real estate brokers or
4 salespersons, [~~or under section 237-13(7) as to insurance~~
5 ~~general agents, subagents, or solicitors~~] shall apply to each
6 such person with respect to the person's portion of the
7 commissions, and no more.

8 (f) Where tourism related services are furnished through
9 arrangements made by a travel agency or tour packager
10 and the gross income is divided between the provider of the
11 services and the travel agency or tour packager, the tax
12 imposed by this chapter shall apply to each such person with
13 respect to such person's respective portion of the proceeds,
14 and no more.

15 As used in this subsection "tourism related services" means
16 catamaran cruises, canoe rides, dinner cruises, lei greetings,
17 transportation included in a tour package, sightseeing tours not
18 subject to chapter 239, admissions to luaus, dinner shows,
19 extravaganzas, cultural and educational facilities, and other
20 services rendered directly to the customer or tourist, but only
21 if the providers of the services other than air transportation

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1 are subject to a four per cent tax under this chapter or chapter
2 239.

3 (g) Where transient accommodations are furnished through
4 arrangements made by a travel agency or tour packager at
5 noncommissioned negotiated contract rates and the gross income
6 is divided between the operator of transient accommodations on
7 the one hand and the travel agency or tour packager on the other
8 hand, the tax imposed by this chapter shall apply to each such
9 person with respect to such person's respective portion of the
10 proceeds, and no more. As used in this subsection, the words
11 "transient accommodations" and "operator" shall be defined in
12 the same manner as they are defined in section 237D-1.

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

19 As used in this subsection:

20 "Carrier" means a person who engages in transportation, and does
21 not include a person such as a freight forwarder or tour
22 packager who provides transportation by contracting with others,

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1 except to the extent that such person oneself engages in
2 transportation.

3 "Contract carrier" means a person other than a public utility as
4 defined under section 239-2 or taxicab, which under contracts or
5 agreements, engages in the transportation of persons or property
6 for compensation, by land, water, or air.

7 "Motor carrier" means a common carrier or contract carrier
8 transporting persons or property for compensation on the public
9 highways, other than a public utility as defined under section
10 239-2 or taxicab.

11 "Public highways" has the meaning defined by section 264-1
12 including both state and county highways, but operation upon
13 rails shall not be deemed transportation on the public highways.

14 SECTION 11. Section 237-21 is amended to read as follows:

15 If any person[~~, other than persons liable to the tax on~~
16 ~~manufacturers as provided by section 237-13(1),~~] is engaged in
17 business both within and without the State or in selling goods
18 for delivery outside the State, and if under the Constitution or
19 laws of the United States or section 237-29.5 the entire gross
20 income of such person cannot be included in the measure of this
21 tax, there shall be apportioned to the State and included in the
22 measure of the tax that portion of the gross income which is

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1 derived from activities within the State, to the extent that the
2 apportionment is required by the Constitution or laws of the
3 United States or section 237-29.5. [~~In the case of a tax upon
4 the production of property in the State the apportionment shall
5 be determined as in the case of the tax on manufacturers.~~] In
6 other cases, if and to the extent that the apportionment cannot
7 be accurately made by separate accounting methods, there shall
8 be apportioned to the State and included in the measure of this
9 tax that proportion of the total gross income, so requiring
10 apportionment, which the cost of doing business within the
11 State, applicable to the gross income, bears to the cost of
12 doing business both within and without the State, applicable to
13 the gross income.

14 SECTION 12. Section 237-24 is amended to read as follows:

15 This chapter shall not apply to the following amounts:

16 (1) Amounts received under life insurance policies and contracts
17 paid by reason of the death of the insured;

18 (2) Amounts received (other than amounts paid by reason of death
19 of the insured) under life insurance,
20 endowment, or annuity contracts, either during the term or at
21 maturity or upon surrender of the contract;

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1 (3) Amounts received under any accident insurance or health
2 insurance policy or contract or under workers' compensation acts
3 or employers' liability acts, as compensation for personal
4 injuries, death, or sickness, including also the amount of any
5 damages or other compensation received, whether as a result of
6 action or by private agreement between the parties on account of
7 the personal injuries, death, or sickness;

8 (4) The value of all property of every kind and sort acquired by
9 gift, bequest, or devise, and the value of all property acquired
10 by descent or inheritance;

11 (5) Amounts received by any person as compensatory damages for
12 any tort injury to the person, or to the person's character
13 reputation, or received as compensatory damages for any tort
14 injury to or destruction of property, whether as the result of
15 action or by private agreement between the parties (provided
16 that amounts received as punitive damages for tort injury or
17 breach of contract injury shall be included in gross income);

18 (6) Amounts received as salaries or wages for services rendered
19 by an employee to an employer;

20 (7) Amounts received as alimony and other similar payments and
21 settlements;

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1 (8) Amounts collected by distributors as fuel taxes on "liquid
2 fuel" imposed by chapter 243, and the amounts collected by such
3 distributors as a fuel tax imposed by any Act of the Congress of
4 the United States;

5 (9) Taxes on liquor imposed by chapter 244D on dealers holding
6 permits under that chapter;

7 ~~{(10) The amounts of taxes on cigarettes and tobacco products
8 imposed by chapter 245 on wholesalers or dealers holding
9 licenses under that chapter and selling the products at
10 wholesale;}~~

11 (11) Federal excise taxes imposed on articles sold at retail and
12 collected from the purchasers thereof and paid to the federal
13 government by the retailer;

14 ~~{(12) The amounts of federal taxes under chapter 37 of the
15 Internal Revenue Code, or similar federal taxes, imposed on
16 sugar manufactured in the State, paid by the manufacturer to the
17 federal government;}~~

18 ~~(13) An amount up to, but not in excess of, \$2,000 a year of
19 gross income~~ Amounts received by any blind, deaf, or totally
20 disabled person engaging, or continuing, in any business, trade,
21 activity, occupation, or calling within the State; a corporation
22 all of whose outstanding shares are owned by an individual or

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1 individuals who are blind, deaf, or totally disabled; a general,
2 limited, or limited liability partnership, all of whose partners
3 are blind, deaf, or totally disabled; or a limited liability
4 company, all of whose members are blind, deaf, or totally
5 disabled;

6 ~~(14) Amounts received by a producer of sugarcane from the
7 manufacturer to whom the producer sells the sugarcane, where:~~

8 ~~(A) The producer is an independent cane farmer, so classed by
9 the Secretary of Agriculture under the Sugar Act of 1948 (61~~

10 ~~Stat. 922, Chapter 519) as the Act may be amended or
11 supplemented;~~

12 ~~(B) The value or gross proceeds of sale of the sugar, and other
13 products manufactured from the sugarcane, is included in the
14 measure of the tax levied on the manufacturer under section 237-
15 13(1) or (2);~~

16 ~~(C) The producer's gross proceeds of sales are dependent upon
17 the actual value of the products manufactured therefrom or the
18 average value of all similar products manufactured by the
19 manufacturer, and;~~

20 ~~(D) The producer's gross proceeds of sales are reduced by reason
21 of the tax on the value or sale of the manufactured products;]~~

1 (15) Money paid by the State or eleemosynary child-placing
2 organizations to foster parents for their care of children in
3 foster homes; and

4 (16) Amounts received by a cooperative housing corporation from
5 its shareholders in reimbursement of funds paid by such
6 corporation for lease rental, real property taxes, and other
7 expenses of operating and maintaining the cooperative land and
8 improvements; provided that such a cooperative corporation is a
9 corporation:

10 (A) Having one and only one class of stock outstanding;

11 (B) Each of the stockholders of which is entitled solely by
12 reason of the stockholder's ownership of stock in the
13 corporation, to occupy for dwelling purposes a house, or an
14 apartment in a building owned or leased by the corporation; and

15 (C) No stockholder of which is entitled (either conditionally or
16 unconditionally) to receive any distribution not out of earnings
17 and profits of the corporation except in a complete or partial
18 liquidation of the corporation.

19 SECTION 13. Section 237-24.3 is amended to read as
20 follows:

1 "237-24.3. **Additional amounts not taxable.** In addition to
2 the amounts not taxable under section 237-24, this chapter shall
3 not apply to:

4 (1) Amounts received from the loading, transportation, and
5 unloading of agricultural commodities shipped for a producer or
6 produce dealer on one island of this State to a person, firm, or
7 organization on another island of this State. The terms
8 "agricultural commodity", "producer", and "produce dealer" shall
9 be defined in the same manner as they are defined in section
10 147-1; provided that agricultural commodities need not have been
11 produced in the State;

12 (2) Amounts received from sales of:

13 (A) Intoxicating liquor as the term "liquor" is defined in
14 chapter 244D;

15 (B) Cigarettes and tobacco products as defined in chapter 245;
16 and

17 (C) Agricultural, meat, or fish products;
18 to any person or common carrier in interstate or foreign
19 commerce, or both, whether ocean-going or air, for consumption
20 out-of-state on the shipper's vessels or airplanes;

21 (3) Amounts received by the manager or board of directors of:

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1 (A) An association of apartment owners of a condominium property
2 regime established in accordance with chapter 514A; or

3 (B) A nonprofit homeowners or community association incorporated
4 in accordance with chapter 414D or any predecessor thereto and
5 existing pursuant to covenants running with the land, in
6 reimbursement of sums paid for common expenses;

7 (4) Amounts received or accrued from:

8 (A) The loading or unloading of cargo from ships, barges,
9 vessels, or aircraft, whether or not the ships, barges, vessels,
10 or aircraft travel between the State and other states or
11 countries or between the islands of the State;

12 (B) Tugboat services including pilotage fees performed within
13 the State, and the towage of ships, barges, or vessels in and
14 out of state harbors, or from one pier to another; and

15 (C) The transportation of pilots or governmental officials to
16 ships, barges, or vessels offshore; rigging gear; checking
17 freight and similar services; standby charges; and use of
18 moorings and running mooring lines;

19 (5) Amounts received by an employee benefit plan by way of
20 contributions, dividends, interest, and other income; and
21 amounts received by a nonprofit organization or office, as
22 payments for costs and expenses incurred for the administration

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1 of an employee benefit plan; provided that this exemption shall
2 not apply to any gross rental income or gross rental proceeds
3 received after June 30, 1994, as income from investments in real
4 property in this State; and provided further that gross rental
5 income or gross rental proceeds from investments in real
6 property received by an employee benefit plan after June 30,
7 1994, under written contracts executed prior to July 1, 1994,
8 shall not be taxed until the contracts are renegotiated,
9 renewed, or extended, or until after December 31, 1998,
10 whichever is earlier. For the purposes of this paragraph,
11 "employee benefit plan" means any plan as defined in section
12 1002(3) of title 29 of the United States Code, as amended;
13 (6) Amounts received for purchases made with United States
14 Department of Agriculture food coupons under the federal food
15 stamp program, and amounts received for purchases made with
16 United States Department of Agriculture food vouchers under the
17 Special Supplemental Foods Program for Women, Infants and
18 Children;
19 (7) Amounts received by a hospital, infirmary, medical clinic,
20 health care facility, pharmacy, or a practitioner licensed to
21 administer the drug to an individual for selling prescription
22 drugs or prosthetic devices to an individual; provided that this

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1 paragraph shall not apply to any amounts received for services
2 provided in selling prescription drugs or prosthetic devices. As
3 used in this paragraph:

4 (A) "Prescription drugs" are those drugs defined under section
5 328-1 and dispensed by filling or refilling a written or oral
6 prescription by a practitioner licensed under law to administer
7 the drug and sold by a licensed pharmacist under section 328-16
8 or practitioners licensed to administer drugs; and

9 (B) "Prosthetic device" means a replacement, corrective, or
10 supportive device including repair and replacement parts for
11 same worn on or in the body to:

- 12 (1) artificially replace a missing portion of the body;
- 13 (2) prevent or correct physical deformity or malfunction; or
- 14 (3) support a weak or deformed portion of the body.

15 A prosthetic device does not include corrective eyeglasses,
16 contact lenses, hearing aids, and dental prothesis. ~~[any~~
17 ~~artificial device or appliance, instrument, apparatus, or~~
18 ~~contrivance, including their components, parts, accessories,~~
19 ~~and replacements thereof, used to replace a missing or~~
20 ~~surgically removed part of the human body, which is prescribed~~
21 ~~by a licensed practitioner of medicine, osteopathy, or~~
22 ~~podiatry and which is sold by the practitioner or which is~~

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1 ~~dispensed and sold by a dealer of prosthetic devices, provided~~
2 ~~that "prosthetic device" shall not mean any auditory,~~
3 ~~ophthalmic, dental, or ocular device or appliance, instrument,~~
4 ~~apparatus, or contrivance];~~

5 (8) Taxes on transient accommodations imposed by chapter 237D
6 and passed on and collected by operators holding certificates of
7 registration under that chapter;

8 (9) Amounts received as dues by an unincorporated merchants
9 association from its membership for advertising media,
10 promotional, and advertising costs for the promotion of the
11 association for the benefit of its members as a whole and not
12 for the benefit of an individual member or group of members less
13 than the entire membership;

14 (10) Amounts received by a labor organization for real property
15 leased to:

16 (A) A labor organization; or

17 (B) A trust fund established by a labor organization for the
18 benefit of its members, families, and dependents for medical or
19 hospital care, pensions on retirement or death of employees,
20 apprenticeship and training, and other membership service
21 programs.

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1 As used in this paragraph, "labor organization" means a labor
2 organization exempt from federal income tax under section
3 501(c)(5) of the Internal Revenue Code, as amended;
4 (11) Amounts received from foreign diplomats and consular
5 officials who are holding cards issued or authorized by the
6 United States Department of State granting them an exemption
7 from state taxes; and
8 (12) Amounts received as rent for the rental or leasing of
9 aircraft or aircraft engines used by the lessees or renters for
10 interstate air transportation of passengers and goods. For
11 purposes of this paragraph, payments made pursuant to a lease
12 shall be considered rent regardless of whether the lease is an
13 operating lease or a financing lease. The definition of
14 "interstate air transportation" is the same as in 49 U.S.C.
15 40102.

16 SECTION 14. Section 237-29.55 is repealed.

17 SECTION 15. Section 237-34 is amended to read as follows:

18 **"§237-34 Filing of returns; disclosure of returns unlawful,**
19 **penalty; destruction of returns.** (a) All monthly and annual
20 returns shall be transmitted to the office of the taxation
21 district in which the privilege upon which the tax accrued is
22 exercised. Where the privilege is exercised in more than one

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1 taxation district the returns shall be transmitted to the office
2 of the first district.

3 (b) All tax returns and return information required to be
4 filed under this chapter, and the report of any investigation of
5 the return or of the subject matter of the return, shall be
6 confidential. It shall be unlawful for any person or any
7 officer or employee of the State to intentionally make known
8 information imparted by any tax return or return information
9 filed pursuant to this chapter, or any report of any
10 investigation of the return or of the subject matter of the
11 return, or to wilfully permit any such return, return
12 information, or report so made, or any copy thereof, to be seen
13 or examined by any person; provided that for tax purposes only
14 the taxpayer, the taxpayer's authorized agent, or persons with a
15 material interest in the return, return information, or report
16 may examine them. Unless otherwise provided by law, persons
17 with a material interest in the return, return information, or
18 report shall include:

19 (1) Trustees;

20 (2) Partners;

21 (3) Persons named in a board resolution or a one per cent
22 shareholder in case of a corporate return;

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- 1 (4) The person authorized to act for a corporation in
- 2 dissolution;
- 3 (5) The shareholder of an S corporation;
- 4 (6) The personal representative, trustee, heir, or
- 5 beneficiary of an estate or trust in case of the
- 6 estate's or decedent's return;
- 7 (7) The committee, trustee, or guardian of any person in
- 8 paragraphs (1) to (6) who is incompetent;
- 9 (8) The trustee in bankruptcy or receiver, and the
- 10 attorney-in-fact of any person in paragraphs (1) to
- 11 (7);
- 12 (9) Persons duly authorized by the State in connection
- 13 with their official duties;
- 14 (10) Any duly accredited tax official of the United States
- 15 or of any state or territory;
- 16 (11) The Multistate Tax Commission or its authorized
- 17 representative;
- 18 (12) Members of a limited liability company; ~~and~~
- 19 (13) A person contractually obligated to pay the taxes
- 20 assessed against another when the latter person is
- 21 under audit by the department; and

1 (14) The Streamlined Sales Tax Governing Board, Inc. or its
2 authorized representative.

3 Any violation of this subsection shall be a misdemeanor.

4 (c) The department may destroy the monthly returns filed
5 pursuant to section 237-30, or any of them, upon the expiration
6 of three years after the end of the calendar year in which the
7 taxes so returned accrued."

8 SECTION 16. The Hawaii Revised Statutes is amended by adding a
9 new chapter 237A to be appropriately designated, entitled Tax on
10 Wholesalers, Service Businesses, and Contractors, and to read as
11 follows:

12 **"§237A-1 Definitions.** (a) The definitions contained in
13 sections 237-1, 237-2 and 237-3 shall be applicable for this
14 chapter.

15 **§237A-2 "Wholesaler", "Jobber" defined.** (a) "Wholesaler"
16 or "jobber" applies only to a person making sales at wholesale.
17 Only the following are sales at wholesale:

18 (1) Sales to a licensed retail merchant, jobber, or other
19 licensed seller for purposes of resale;

20 (2) Sales to a licensed manufacturer of materials or
21 commodities that are to be incorporated by the
22 manufacturer into a finished or saleable product

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

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

19 (4) Sales to a licensed contractor, of materials or
20 commodities that are to be incorporated by the
21 contractor into the finished work or project required
22 by the contract and that will remain in such finished

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1 work or project in such form as to be perceptible to
2 the senses;

3 (5) Sales to a licensed producer, or to a cooperative
4 association described in section 237-23(a)(7) for sale
5 to a licensed producer, or to a licensed person
6 operating a feed lot, of poultry or animal feed,
7 hatching eggs, semen, replacement stock, breeding
8 services for the purpose of raising or producing animal
9 or poultry products for disposition as described in
10 section 237-5 or for incorporation into a manufactured
11 product as described in paragraph (2) or for the
12 purpose of breeding, hatching, milking, or egg laying
13 other than for the customer's own consumption of the
14 meat, poultry, eggs, or milk so produced; provided that
15 in the case of a feed lot operator, only the segregated
16 cost of the feed furnished by the feed lot operator as
17 part of the feed lot operator's service to a licensed
18 producer of poultry or animals to be butchered or to a
19 cooperative association described in section 237-
20 23(a)(7) of such licensed producers shall be deemed to
21 be a sale at wholesale; and provided further that any
22 amount derived from the furnishing of feed lot

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1 services, other than the segregated cost of feed, shall
2 be deemed taxable at the service business rate. This
3 paragraph shall not apply to the sale of feed for
4 poultry or animals to be used for hauling,
5 transportation, or sports purposes;

6 (6) Sales to a licensed producer, or to a cooperative
7 association described in section 237-23(a)(7) for sale
8 to the producer, of seed or seedstock for producing
9 agricultural and aquacultural products, or bait for
10 catching fish (including the catching of bait for
11 catching fish), which agricultural and aquacultural
12 products or fish are to be disposed of as described in
13 section 237-5 or to be incorporated in a manufactured
14 product as described in paragraph (2);

15 (7) Sales to a licensed producer, or to a cooperative
16 association described in section 237-23(a)(7) for sale
17 to such producer; of polypropylene shade cloth; of
18 polyfilm; of polyethylene film; of cartons and such
19 other containers, wrappers, and sacks, and binders to
20 be used for packaging eggs, vegetables, fruits, and
21 other agricultural and aquacultural products; of
22 seedlings and cuttings for producing nursery plants or

1 aquacultural products; or of chick containers; which
2 cartons and such other containers, wrappers, and sacks,
3 binders, seedlings, cuttings, and containers are to be
4 used as described in section 237-5, or to be
5 incorporated in a manufactured product as described in
6 paragraph (2);

7 (8) Sales of tangible personal property:

8 (A) To a licensed seller engaged in a service business
9 or calling; provided that:

10 (i) The property is not consumed or incidental to
11 the performance of the services;

12 (ii) There is a resale of the article at the retail
13 rate of four per cent; and

14 (iii) The resale of the article is separately
15 charged or billed by the person rendering the
16 services;

17 (B) Where:

18 (i) Tangible personal property is sold upon the
19 order or request of a licensed seller for the
20 purpose of rendering a service in the course of
21 the person's service business or calling, or
22 upon the order or request of a person subject to

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1 tax under section 237D-2 for the purpose of
2 furnishing transient accommodations;

3 (ii) The tangible personal property becomes or is
4 used as an identifiable element of the service
5 rendered; and

6 (iii) The cost of the tangible personal property
7 does not constitute overhead to the licensed
8 seller; the sale shall be subject to section
9 237-13.3; or

10 (C) Where the taxpayer is subject to both subparagraphs
11 (A) and (B), then the taxpayer shall be taxed under
12 subparagraph (A). Subparagraphs (A) and (C) shall
13 be repealed on January 1, 2006;

14 (9) Sales to a licensed leasing company of capital goods
15 that have a depreciable life, are purchased by the
16 leasing company for lease to its customers, and are
17 thereafter leased as a service to others;

18 (10) Sales of services to a licensed seller engaging in a
19 business or calling whenever:

20 (A) Either:

21 (i) In the context of a service-to-service
22 transaction, a service is rendered upon the

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1 order or request of a licensed seller for the
2 purpose of rendering another service in the
3 course of the seller's service business or
4 calling;

5 (ii) In the context of a service-to-tangible
6 personal property transaction, a service is
7 rendered upon the order or request of a
8 licensed seller for the purpose of
9 manufacturing, producing, or preparing tangible
10 personal property to be sold;

11 (iii) In the context of a services-to-contracting
12 transaction, a service is rendered upon the
13 order or request of a licensed contractor as
14 defined in section 237-6 for the purpose of
15 assisting that licensed contractor; or

16 (iv) In the context of a services-to-transient
17 accommodations rental transaction, a service is
18 rendered upon the order or request of a person
19 subject to tax under section 237D-2 for the
20 purpose of furnishing transient accommodations;

21 (B) The benefit of the service passes to the customer of
22 the licensed seller, licensed contractor, or person

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1 furnishing transient accommodations as an identifiable
2 element of the other service or property to be sold, the
3 contracting, or the furnishing of transient
4 accommodations;

5 (C) The cost of the service does not constitute overhead to
6 the licensed seller, licensed contractor, or person
7 furnishing transient accommodations;

8 (D) The gross income of the licensed seller is not divided
9 between the licensed seller and another licensed seller,
10 contractor, or person furnishing transient
11 accommodations for imposition of the tax under this
12 chapter;

13 (E) The gross income of the licensed seller is not subject
14 to a deduction under this chapter or chapter 237D; and

15 (F) The resale of the service, tangible personal property,
16 contracting, or transient accommodations is subject to
17 the tax imposed under this chapter at the highest tax
18 rate. Sales subject to this paragraph shall be subject
19 to section 237-13.3.

20 (11) Sales to a licensed retail merchant, jobber, or other
21 licensed seller of bulk condiments or prepackaged
22 single-serving packets of condiments that are provided

1 to customers by the licensed retail merchant, jobber,
2 or other licensed seller;

3 (12) Sales to a licensed retail merchant, jobber, or other
4 licensed seller of tangible personal property that will
5 be incorporated or processed by the licensed retail
6 merchant, jobber, or other licensed seller into a
7 finished or saleable product during the course of its
8 preparation for market (including disposable,
9 nonreturnable containers, packages, or wrappers, in
10 which the product is contained and that are generally
11 known and most commonly used to contain food or
12 beverage for transfer or delivery), and which finished
13 or saleable product is to be sold and not otherwise
14 used by the licensed retail merchant, jobber, or other
15 licensed seller;

16 (13) Sales of amusements subject to taxation under section
17 237-13(4) to a licensed seller engaging in a business
18 or calling whenever:

19 (A) Either:

20 (i) In the context of an amusement-to-service
21 transaction, an amusement is rendered upon the
22 order or request of a licensed seller for the

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1 purpose of rendering another service in the
2 course of the seller's service business or
3 calling;

4 (ii) In the context of an amusement-to-tangible
5 personal property transaction, an amusement is
6 rendered upon the order or request of a licensed
7 seller for the purpose of selling tangible
8 personal property; or

9 (iii) In the context of an amusement-to-amusement
10 transaction, an amusement is rendered upon the
11 order or request of a licensed seller for the
12 purpose of rendering another amusement in the
13 course of the person's amusement business;

14 (B) The benefit of the amusement passes to the customer
15 of the licensed seller as an identifiable element
16 of the other service, tangible personal property to
17 be sold, or amusement;

18 (C) The cost of the amusement does not constitute
19 overhead to the licensed seller;

20 (D) The gross income of the licensed seller is not
21 divided between the licensed seller and another
22 licensed seller, person furnishing transient

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1 accommodations, or person rendering an amusement for
2 imposition of the tax under chapter 237;

3 (E) The gross income of the licensed seller is not
4 subject to a deduction under this chapter; and

5 (F) The resale of the service, tangible personal
6 property, or amusement is subject to the tax imposed
7 under this chapter at the highest rate. As used in
8 this paragraph, "amusement" means entertainment
9 provided as part of a show for which there is an
10 admission charge. Sales subject to this paragraph
11 shall be subject to section 237-13.3; and

12 (14) Sales by a printer to a publisher of magazines or
13 similar printed materials containing advertisements,
14 when the publisher is under contract with the
15 advertisers to distribute a minimum number of
16 magazines or similar printed materials to the public
17 or defined segment of the public, whether or not there
18 is a charge to the persons who actually receive the
19 magazines or similar printed materials.

20 (b) If the use tax law is finally held by a court of
21 competent jurisdiction to be unconstitutional or invalid
22 insofar as it purports to tax the use or consumption of

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

19 **§237A-3 "Producer" defined.** "Producer" means any person
20 engaged in the business of raising and producing agricultural
21 products in their natural state, or in producing natural
22 resource products, or engaged in the business of fishing or

1 aquaculture, for sale, or for shipment or transportation out of
2 the State, of the agricultural or aquaculture products in their
3 natural or processed state, or butchered and dressed, or the
4 natural resource products, or fish.

5 As used in this section "agricultural products" include
6 floricultural, horticultural, viticultural, forestry, nut,
7 coffee, dairy, livestock, poultry, bee, animal, and any other
8 farm, agronomic, or plantation products.

9 **"§237A-4 Definitions.** The definitions contained in
10 sections 237-6 and 237-7 shall be applicable for this chapter.

11 **"237A-5 Administrative Provisions.** Sections 237-8, 237-
12 9, 237-9.5, 237-11, and 237-12 shall be applicable for this
13 chapter

14 **§237A-6 Imposition of tax.** There is hereby levied and shall
15 be assessed and collected annually privilege taxes against
16 persons on account of their business and other activities in the
17 State measured by the application of rates against values of
18 products, gross proceeds of sales, or gross income, whichever is
19 specified, as follows:

20 (1) Tax on manufacturers.

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

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

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

19 (i) If the products at the time of their entry into
20 interstate or foreign commerce already have
21 been sold, the gross proceeds of sale, less the
22 transportation expenses, if any, incurred in

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1 realizing the gross proceeds for transportation
2 from the time of entry of the products into
3 interstate or foreign commerce, including
4 insurance and storage in transit, shall be the
5 measure of the value of the products;

6 (ii) If the products have not been sold at the time
7 of their entry into interstate or foreign
8 commerce, and in cases governed by clause (i)
9 in which the products are sold under
10 circumstances such that the gross proceeds of
11 sale are not indicative of the true value of
12 the products, the value of the products
13 constituting the basis for assessment shall
14 correspond as nearly as possible to the gross
15 proceeds of sales for delivery outside the
16 State, adjusted as provided in clause (i), or
17 if sufficient data are not available, sales in
18 the State, of similar products of like quality
19 and character and in similar quantities, made
20 by the taxpayer (unless not indicative of the
21 true value) or by others. Sales outside the
22 State, adjusted as provided in clause (i), may

1 be considered when they constitute the best
2 available data. The department shall prescribe
3 uniform and equitable rules for ascertaining
4 the values;

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

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

16 (2) Tax on Producers.

17 (A) Upon every person engaging or continuing within
18 this State in the business of a producer, the tax
19 shall be equal to one-half of one per cent of the
20 gross proceeds of sales of the business, or the
21 value of the products, for sale, if sold for

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1 delivery outside the State or shipped or
2 transported out of the State, and the value of
3 the products shall be determined in the same
4 manner as the value of manufactured products
5 covered in the cases under paragraph (1)(C).

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

16 (4) Tax upon theaters, amusements, radio broadcasting
17 stations, etc. Upon every person engaging or
18 continuing within the State in the business of
19 operating a theater, opera house, moving picture show,
20 vaudeville, amusement park, dance hall, skating rink,
21 radio broadcasting station, or any other place at

1 which amusements are offered to the public, at
2 wholesale;

3 (5) Tax on service business.

4 (A) Upon every person engaging or continuing within
5 the State in any service business or calling
6 including professional services not otherwise
7 specifically taxed under this chapter, as a
8 wholesaler described in section 237A-2, the tax
9 shall be equal to one-half of one per cent of the
10 gross income of the business.

11 (6) Tax on Sales by Wholesalers.

12 (A) Upon every person who is engaged in the business
13 of a wholesaler or jobber as described in section
14 237A-2 of selling any tangible personal property
15 whatsoever (not including, however, bonds or other
16 evidences of indebtedness, or stocks), there is
17 hereby levied, and shall be assessed and
18 collected, a tax equivalent to one-half of one per
19 cent of the gross proceeds of sales of the
20 business as a wholesaler or jobber as defined in
21 section 237A-2.

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1 (B) Gross proceeds of sales of tangible property in
2 interstate and foreign commerce shall constitute a
3 part of the measure of the tax imposed on persons
4 in the business of selling tangible personal
5 property as a wholesaler, to the extent, under the
6 conditions, and in accordance with the provisions
7 of the Constitution of the United States and the
8 Acts of Congress of the United States which may be
9 now in force or may be hereafter adopted, and
10 whenever there occurs in the State an activity to
11 which, under the Constitution and Acts of
12 Congress, there may be attributed gross proceeds
13 of sales, the gross proceeds shall be so
14 attributed.

15 (C) When a manufacturer or producer, as defined in
16 section_237A-00, engaged in such business in the State, also is
17 engaged in selling the manufacturer's or producer's products in
18 the State at wholesale, taxed under this chapter, retail, or in
19 any other manner, the tax for the privilege of engaging in the
20 business of selling the products in the State shall apply to the
21 manufacturer or producer as well as the tax for the privilege of
22 manufacturing or producing in the State, and the manufacturer or

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1 producer shall make the returns of the gross proceeds of the
2 wholesale, retail, or other sales required for the privilege of
3 selling in the State, as well as making the returns of the value
4 or gross proceeds of sales of the products required for the
5 privilege of manufacturing or producing in the State. The
6 manufacturer or producer shall pay the tax imposed in this
7 chapter for the privilege of selling its products in the State,
8 and the value or gross proceeds of sales of the products, thus
9 subjected to tax, may be deducted insofar as duplicated as to
10 the same products by the measure of the tax upon the
11 manufacturer or producer for the privilege of manufacturing or
12 producing in the State under Chapter 237A; provided that no
13 producer of agricultural products who sells the products to a
14 purchaser who will process the products outside the State shall
15 be required to pay the tax imposed in this chapter for the
16 privilege of producing or selling those products.

17 **"§ 237A-7 Resale Certificates.** (A) The department, by
18 rule, may require that a seller take from the purchaser of
19 tangible personal property a certificate, in a form prescribed by
20 the department, certifying that the sale is a sale at wholesale;
21 provided that:

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

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

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

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

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

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

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

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

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1 **"237A-8 Tax on receipts of sugar benefit payments.** Upon
2 the amounts received from the United States government
3 by any producer of sugar (or the producer's legal
4 representative or heirs), as defined under and by virtue
5 of the Sugar Act of 1948, as amended, or other Acts of
6 the Congress of the United States relating thereto,
7 there is hereby levied a tax of one-half of one per cent
8 of the gross amount received; provided that the tax
9 levied hereunder on any amount so received and actually
10 disbursed to another by a producer in the form of a
11 benefit payment shall be paid by the person or persons
12 to whom the amount is actually disbursed, and the
13 producer actually making a benefit payment to another
14 shall be entitled to claim on the producer's return a
15 deduction from the gross amount taxable hereunder in the
16 sum of the amount so disbursed. The amounts taxed under
17 this paragraph shall not be taxable under any other
18 paragraph, subsection, or section of this chapter.

19 **§237A-9 Segregation of gross income, etc., on records and**
20 **in returns.** The imposition of taxes and the application of tax
21 rates do not depend upon the business in which the taxpayer is
22 primarily engaged. One business may be subject to two or more

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1 tax rates. If a business is within the purview of two or more of
2 the paragraphs of section 237-13 or other provisions of this
3 chapter all of them apply, each provision being applicable to
4 the appropriate item of gross income, gross proceeds of sales,
5 or value of products. However, any person engaging or continuing
6 in a business having gross income, gross proceeds of sales, and
7 value of products, or any of these as the case may be, taxable
8 at different rates, shall be subject to taxation upon the
9 aggregate amount of the gross income, gross proceeds of sales,
10 and value of products of the business at the highest rate
11 applicable to any part of the aggregate, unless the person shall
12 segregate the parts taxable at different rates upon the person's
13 records and in the person's returns, and shall sustain the
14 burden of proving that the segregation was correctly made.

15 **§237A-10 Assessment on generated electricity.** Any other
16 provision of law to the contrary notwithstanding, the levy and
17 assessment of tax on the gross proceeds from the sale of
18 electric power to a public utility company for resale to the
19 public, shall be made only as a tax on business of a producer,
20 at the rate assessed producers, under section 237A-6(2)

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1 **§237A-11 Technicians.** When technicians supply dentists or
2 physicians with dentures, orthodontic devices, braces, and
3 similar items which have been prepared by the technician in
4 accordance with specifications furnished by the dentist or
5 physician, and such items are to be used by the dentist or
6 physician in the dentist's or physician's professional practice
7 for a particular patient who is to pay the dentist or physician
8 for the same as a part of the dentist's or physician's
9 professional services, the technician shall be taxed as though
10 the technician were a manufacturer selling a product to a
11 licensed retailer, rather than pursuant to chapter 237 at the
12 rate of four per cent which is generally applied to professions
13 and services.

14 **§237A-11.5 Activity Ordered by Others.** (a) Where,
15 through the activity of a person taxable under section 237-
16 13(5), a product has been milled, processed, or otherwise
17 manufactured upon the order of another taxpayer who is a
18 manufacturer taxable upon the value of the entire manufactured
19 products, which consists in part of the value of the services
20 taxable under section 237-13(5), so much gross income as is
21 derived from the rendering of the services shall be subjected to
22 tax on the person rendering the services at the rate of one-half

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1 of one per cent, and the value of the entire product shall be
2 included in the measure of the tax imposed on the other taxpayer
3 as elsewhere provided.

4 (b) Where, through the activity of a person taxable under
5 section 237-13(5), there have been rendered to a cane planter
6 services consisting in the harvesting or hauling of the cane, or
7 consisting in road maintenance, under a contract between the
8 person rendering the services and the cane planter, covering the
9 services and also the milling of the sugar, the services of
10 harvesting and hauling the cane and road maintenance shall be
11 treated the same as the service of milling the cane, as provided
12 by subsection (a), and the value of the entire product,
13 manufactured or sold for the cane planter under the contract,
14 shall be included in the measure of the tax imposed on the
15 persons elsewhere provided.

16 **§237A-12 Apportionment.** In the case of a tax upon the
17 production of property in the State the apportionment shall be
18 determined as in the case of the tax on manufacturers provided
19 in section 237A-5.

20 **"§237A-13 Conformity to Constitution.** Section 237-22 shall
21 be applicable for this chapter.

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1 **"237A-14 Exemptions.** The exemptions provided in section
2 237-23, 237-26, 237-27.5, 237-29, 237-29.5, and 237-29.53 shall
3 be applicable for this chapter.

4 **§237A-15 Amounts not taxable.** This chapter shall not apply
5 to the following amounts:

6 (1) The amounts of taxes on cigarettes and tobacco products
7 imposed by chapter 245 on wholesalers or dealers
8 holding licenses under that chapter and selling the
9 products at wholesale;

10 (2) The amounts of federal taxes under chapter 37 of the
11 Internal Revenue Code, or similar federal taxes,
12 imposed on sugar manufactured in the State, paid by
13 the manufacturer to the federal government;

14 (3) Gross income received by any blind, deaf, or totally
15 disabled person engaging, or continuing, in any
16 business, trade, activity, occupation, or calling
17 within the State; a corporation all of whose
18 outstanding shares are owned by an individual or
19 individuals who are blind, deaf, or totally disabled;
20 a general, limited or limited liability partnership,
21 all of whose partners are blind, deaf, or totally

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1 disabled; or a limited liability company, all of whose
2 members are blind, deaf, or totally disabled;

3 (4) Amounts received by a producer of sugarcane from the
4 manufacturer to whom the producer sells the sugarcane,
5 where:

6 (A) The producer is an independent cane farmer, so
7 classed by the Secretary of Agriculture under the
8 Sugar Act of 1948 (61 Stat. 922, Chapter 519) as
9 the Act may be amended or supplemented;

10 (B) The value or gross proceeds of sale of the sugar,
11 and other products manufactured from the sugarcane,
12 is included in the measure of the tax levied on the
13 manufacturer under section 237-13(1) or (2);

14 (C) The producer's gross proceeds of sales are
15 dependent upon the actual value of the products
16 manufactured therefrom or the average value of all
17 similar products manufactured by the manufacturer;
18 and

1 (D) The producer's gross proceeds of sales are reduced
2 by reason of the tax on the value or sale of the
3 manufactured products;

4 **"237A-18 Exemption for sale of tangible personal**
5 **property for resale at wholesale.** (a) There shall be exempted
6 from, and excluded from the measure of, the taxes imposed by
7 this chapter all of the gross proceeds or gross income arising
8 from the sale of tangible personal property imported to Hawaii
9 from a foreign or domestic source to a licensed taxpayer for
10 subsequent resale for the purpose of wholesale as denied under
11 section 237A-2.

12 (b) The department, by rule, may provide that a seller
13 may take from the purchaser of imported tangible personal
14 property, a certificate, in a form that the department shall
15 prescribe, certifying that the purchaser of the imported
16 tangible personal property shall resell the imported tangible
17 personal property at wholesale as defined under section 237A-2.
18 Any purchaser who furnishes a certificate shall be obligated to
19 pay to the seller, upon demand, if the sale in fact is not a
20 sale for the purpose of resale at wholesale, the amount of the
21 additional tax which by reason thereof is imposed upon the

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1 seller. The absence of a certificate, unless the sales of the
2 business are exclusively a sale for the purpose of resale at
3 wholesale, in itself, shall give rise to the presumption that
4 the sale is not a sale for the purpose of resale at wholesale."

5 **"237A-19 Administrative provisions.** Sections 237-20,
6 237-21, 237-27, 237-30, 237-31, 237-32, 237-33, 237-33.5, 237-
7 34, 237-35, 237-36, 237-37, 237-38, 237-39, 237-40, 237-41, 237-
8 42, 237-43, 237-46, 237-47, and 237-49 shall be applicable for
9 this chapter."

10 SECTION 17. Section 238-2 is amended to read as follows:

11 "**§ 238-2 Imposition of tax on tangible personal property;**
12 **exemptions.** There is hereby levied an excise tax on the use in
13 this State of tangible personal property which is imported by a
14 taxpayer in this State whether owned, purchased from an
15 unlicensed seller, or however acquired for use in this State,
16 unless subject to tax or exempt from tax under Chapter 238A.

17 The tax imposed by this chapter shall accrue when the property
18 is acquired by the importer or purchaser and becomes subject to
19 the taxing jurisdiction of the State. The rate[~~s~~] of tax hereby
20 imposed is [~~and the exemption thereof are as follows:~~

21 ~~(1) If the importer or purchaser is licensed under chapter~~
22 ~~237 and is:~~

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1 ~~(A) A wholesaler or jobber importing or~~
2 ~~purchasing for purposes of sale or resale;~~
3 ~~or~~
4 ~~(B) A manufacturer importing or purchasing~~
5 ~~material or commodities which are to be~~
6 ~~incorporated by the manufacturer into a~~
7 ~~finished or saleable product (including the~~
8 ~~container or package in which the product~~
9 ~~is contained) wherein it will remain in~~
10 ~~such form as to be perceptible to the~~
11 ~~senses, and which finished or saleable~~
12 ~~product is to be sold in such manner as to~~
13 ~~result in a further tax on the activity of~~
14 ~~the manufacturer as the manufacturer or as~~
15 ~~a wholesaler, and not as a retailer, there~~
16 ~~shall be no tax; provided that if the~~
17 ~~wholesaler, jobber, or manufacturer is also~~
18 ~~engaged in business as a retailer (so~~
19 ~~classed under chapter 237), paragraph (2)~~
20 ~~shall apply to the wholesaler, jobber or~~
21 ~~manufacturer, but the director of taxation~~
22 ~~shall refund to the wholesaler, jobber, or~~
23 ~~manufacturer, in the manner provided under~~
24 ~~section 231 23(c) such amount of tax as the~~
25 ~~wholesaler, jobber, or manufacturer shall,~~

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1 ~~to the satisfaction of the director,~~
2 ~~establish to have been paid by the~~
3 ~~wholesaler, jobber, or manufacturer to the~~
4 ~~director with respect to the property which~~
5 ~~has been used by the wholesaler, jobber, or~~
6 ~~manufacturer for the purposes stated in~~
7 ~~this paragraph;~~

8 ~~(2) If the importer or purchaser is licensed under chapter~~
9 ~~237 and is:~~

10 ~~(A) A retailer or person importing or~~
11 ~~purchasing for purposes of sale or resale,~~
12 ~~not exempted by paragraph (1);~~

13 ~~(B) A manufacturer importing or purchasing~~
14 ~~material or commodities which are to be~~
15 ~~incorporated by the manufacturer into a~~
16 ~~finished or saleable product (including the~~
17 ~~container or package in which the product~~
18 ~~is contained) wherein it will remain in~~
19 ~~such form as to be perceptible to the~~
20 ~~senses, and which finished or saleable~~
21 ~~product is to be sold at retail in this~~
22 ~~State, in such manner as to result in a~~
23 ~~further tax on the activity of the~~
24 ~~manufacturer in selling such product at~~
25 ~~retail;~~

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1 ~~(C) A contractor importing or purchasing~~
2 ~~material or commodities which are to be~~
3 ~~incorporated by the contractor into the~~
4 ~~finished work or project required by the~~
5 ~~contract and which will remain in such~~
6 ~~finished work or project in such form as to~~
7 ~~be perceptible to the senses;~~

8 ~~(D) A person engaged in a service business~~
9 ~~or calling as defined in section 237-7, or a~~
10 ~~person furnishing transient accommodations~~
11 ~~subject to the tax imposed by section 237D-2,~~
12 ~~in which the import or purchase of tangible~~
13 ~~personal property would have qualified as~~
14 ~~sale at wholesale as defined in section 237-~~
15 ~~4(a)(8) had the seller of the property been~~
16 ~~subject to the tax in chapter 237; or~~

17 ~~(E) A publisher of magazines or similar~~
18 ~~printed materials containing advertisements,~~
19 ~~when the publisher is under contract with the~~
20 ~~advertisers to distribute a minimum number of~~
21 ~~magazines or similar printed materials to the~~
22 ~~public or defined segment of the public,~~
23 ~~whether or not there is a charge to the~~
24 ~~persons who actually receive the magazines or~~
25 ~~similar printed materials.~~

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1 ~~the tax shall be one half of one per cent of the purchase~~
2 ~~price of the property, if the purchase and sale are~~
3 ~~consummated in Hawaii, or, if there is no purchase price~~
4 ~~applicable thereto, or if the purchase or sale is~~
5 ~~consummated outside of Hawaii, then one half of one per cent~~
6 ~~of the value of such property; and~~

7 (3) ~~In all other cases,]~~ four per cent of the value of the
8 property.

9 For purposes of this section, tangible personal property is
10 property that is imported by the taxpayer for use in this
11 State, notwithstanding the fact that title to the property,
12 or the risk of loss to the property, passes to the
13 purchaser of the property at a location outside this State.

14 SECTION 18. Section 238-2.3 is amended to read as follows:

15 **§238-2.3 Imposition of tax on imported services or**
16 **contracting; exemptions.** There is hereby levied an excise
17 tax on the value of services or contracting as defined in
18 section 237-6 that are performed by an unlicensed seller at
19 a point outside the State and imported or purchased for use
20 in this State, unless subject to tax or exempt from tax
21 under Chapter 238A. The tax imposed by this chapter shall
22 accrue when the service or contracting as defined in
23 section 237-6 is received by the importer or purchaser and
24 becomes subject to the taxing jurisdiction of the State.

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1 The rate[s] of the tax hereby imposed is [and the
2 ~~exemptions from the tax are as follows:~~

3 ~~(1) If the importer or purchaser is licensed under
4 chapter 237 and is:~~

5 ~~(A) Engaged in a service business or calling in
6 which the imported or purchased services or
7 contracting become identifiable elements,
8 excluding overhead, of the services rendered by
9 the importer or purchaser, and the gross income
10 of the importer or purchaser is subject to the
11 tax imposed under chapter 237A on services at the
12 rate of one half of one per cent; or~~

13 ~~B) A manufacturer importing or purchasing
14 services or contracting that become identifiable
15 elements, excluding overhead, of a finished or
16 saleable product (including the container or
17 package in which the product is contained) and
18 the finished or saleable product is to be sold in
19 a manner that results in a further tax on the
20 manufacturer as a wholesaler, and not a retailer;
21 there shall be no tax imposed on the value of the
22 imported or purchased services or contracting;
23 provided that if the manufacturer is also engaged
24 in business as a retailer as classified under
25 chapter 237, paragraph (2) shall apply to the
26 manufacturer, but the director of taxation shall
27 refund to the manufacturer, in the manner
28 provided under section 231-23(c), that amount of~~

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1 ~~tax that the manufacturer, to the satisfaction of~~
2 ~~the director, shall establish to have been paid~~
3 ~~by the manufacturer to the director with respect~~
4 ~~to services that have been used by the~~
5 ~~manufacturer for the purposes stated in this~~
6 ~~paragraph.~~

7 ~~(2) If the importer or purchaser is a person licensed~~
8 ~~under chapter 237 and is:~~

9 ~~A) Engaged in a service business or calling in~~
10 ~~which the imported or purchased services or~~
11 ~~contracting become identifiable elements,~~
12 ~~excluding overhead, of the services rendered by~~
13 ~~the importer or purchaser, and the gross income~~
14 ~~from those services when sold by the importer or~~
15 ~~purchaser is subject to the tax imposed under~~
16 ~~chapter 237;~~

17 ~~B) A manufacturer importing or purchasing~~
18 ~~services or contracting that become identifiable~~
19 ~~elements, excluding overhead, of the finished or~~
20 ~~saleable manufactured product (including the~~
21 ~~container or package in which the product is~~
22 ~~contained) and the finished or saleable product~~
23 ~~is to be sold in a manner that results in a~~
24 ~~further tax under chapter 237 on the activity of~~
25 ~~the manufacturer as a retailer; or~~

26 ~~C) A contractor importing or purchasing services~~
27 ~~or contracting that become identifiable elements,~~

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1 ~~excluding overhead, of the finished work or~~
2 ~~project required, under the contract, and where~~
3 ~~the gross proceeds derived by the contractor are~~
4 ~~subject to the tax under section 237-13(3) as a~~
5 ~~contractor, the tax shall be one half of one per~~
6 ~~cent of the value of the imported or purchased~~
7 ~~services or contracting, and~~

8 (4) ~~In all other cases, the importer or purchaser is~~
9 ~~subject to the tax at the rate of }four percent on the~~
10 ~~value of the imported or purchased services or~~
11 ~~contracting.~~

12 SECTION 19. Section 238-4 is repealed.

13 SECTION 20. A new chapter 238A to be appropriately
14 designated is added entitled Tax on Imports of Goods, Services
15 and Contracting for Resale and to read as follows:

16 "**§238A-1 Definitions.** Definitions contained in section
17 238-1 shall be applicable for this chapter.

18 **§238A-2 Imposition of tax on tangible personal property;**
19 **exemptions.** There is hereby levied an excise tax on the use in
20 this State of tangible personal property which is imported by a
21 taxpayer in this State whether owned, purchased from an
22 unlicensed seller, or however acquired for use in this State.
23 The tax imposed by this chapter shall accrue when the property
24 is acquired by the importer or purchaser and becomes subject to

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1 the taxing jurisdiction of the State. The rates of the tax
2 hereby imposed and the exemptions thereof are as follows:

3 (1) If the importer or purchaser is licensed under
4 chapter 237A and is:

5 (A) A wholesaler or jobber importing or
6 purchasing for purposes of sale or resale; or

7 (B) A manufacturer importing or purchasing
8 material or commodities which are to be
9 incorporated by the manufacturer into a finished
10 or saleable product (including the container or
11 package in which the product is contained)
12 wherein it will remain in such form as to be
13 perceptible to the senses, and which finished or
14 saleable product is to be sold in such manner as
15 to result in a further tax on the activity of the
16 manufacturer as the manufacturer or as a
17 wholesaler, and not as a retailer,

18 there shall be no tax; provided that if the wholesaler, jobber,
19 or manufacturer is also engaged in business as a retailer (so
20 classed under chapter 237), paragraph (2) shall apply to the
21 wholesaler, jobber, or manufacturer, but the director of
22 taxation shall refund to the wholesaler, jobber, or
23 manufacturer, in the manner provided under section 231-23(c)
24 such amount of tax as the wholesaler, jobber, or manufacturer
25 shall, to the satisfaction of the director, establish to have
26 been paid by the wholesaler, jobber, or manufacturer to the
27 director with respect to property which has been used by the

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1 wholesaler, jobber, or manufacturer for the purposes stated in
2 this paragraph;

3 (2) If the importer or purchaser is licensed under
4 chapter 237 and is:

5 (A) A retailer or other person importing or
6 purchasing for purposes of sale or resale, not
7 exempted by paragraph (1);

8 (B) A manufacturer importing or purchasing
9 material or commodities which are to be
10 incorporated by the manufacturer into a finished
11 or saleable product (including the container or
12 package in which the product is contained)
13 wherein it will remain in such form as to be
14 perceptible to the senses, and which finished or
15 saleable product is to be sold at retail in this
16 State, in such manner as to result in a further
17 tax on the activity of the manufacturer in
18 selling such products at retail;

19 (C) A contractor importing or purchasing material
20 or commodities which are to be incorporated by
21 the contractor into the finished work or project
22 required by the contract and which will remain in
23 such finished work or project in such form as to
24 be perceptible to the senses;

25 (D) A person engaged in a service business or
26 calling as defined in section 237-7, or a person
27 furnishing transient accommodations subject to

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1 the tax imposed by section 237D-2, in which the
2 import or purchase of tangible personal property
3 would have qualified as a sale at wholesale as
4 defined in section 237-4(a)(8) had the seller of
5 the property been subject to the tax in chapter
6 237; or

7 (E) A publisher of magazines or similar printed
8 materials containing advertisements, when the
9 publisher is under contract with the advertisers
10 to distribute a minimum number of magazines or
11 similar printed materials to the public or
12 defined segment of the public, whether or not
13 there is a charge to the persons who actually
14 receive the magazines or similar printed
15 materials,

16 the tax shall be one-half of one per cent of the purchase price
17 of the property, if the purchase and sale are consummated in
18 Hawaii; or, if there is no purchase price applicable thereto, or
19 if the purchase or sale is consummated outside of Hawaii, then
20 one-half of one per cent of the value of such property.

21 **§238A-3 Imposition of tax on imported services or**
22 **contracting; exemptions.** There is hereby levied an excise tax on
23 the value of services or contracting as defined in section 237-6
24 that are performed by an unlicensed seller at a point outside
25 the State and imported or purchased for use in this State. The
26 tax imposed by this chapter shall accrue when the service or
27 contracting as defined in section 237-6 is received by the
28 importer or purchaser and becomes subject to the taxing

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1 jurisdiction of the State. The rates of the tax hereby imposed
2 and the exemptions from the tax are as follows:

3 (1) If the importer or purchaser is licensed under
4 chapter 237 and is:

5 (A) Engaged in a service business or calling in
6 which the imported or purchased services or
7 contracting become identifiable elements,
8 excluding overhead, of the services rendered by
9 the importer or purchaser, and the gross income
10 of the importer or purchaser is subject to the
11 tax imposed under chapter 237A on services at the
12 rate of one-half of one per cent; or

13 B) A manufacturer importing or purchasing
14 services or contracting that become identifiable
15 elements, excluding overhead, of a finished or
16 saleable product (including the container or
17 package in which the product is contained) and
18 the finished or saleable product is to be sold in
19 a manner that results in a further tax on the
20 manufacturer as a wholesaler, and not a retailer;

21 there shall be no tax imposed on the value of the
22 imported or purchased services or contracting;
23 provided that if the manufacturer is also engaged in
24 business as a retailer as classified under chapter
25 237, paragraph (2) shall apply to the manufacturer,
26 but the director of taxation shall refund to the
27 manufacturer, in the manner provided under section

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1 231-23(c), that amount of tax that the manufacturer,
2 to the satisfaction of the director, shall establish
3 to have been paid by the manufacturer to the director
4 with respect to services that have been used by the
5 manufacturer for the purposes stated in this
6 paragraph.

7 (2) If the importer or purchaser is a person licensed
8 under chapter 237 and is:

9 A) Engaged in a service business or calling in
10 which the imported or purchased services or
11 contracting become identifiable elements,
12 excluding overhead, of the services rendered by
13 the importer or purchaser, and the gross income
14 from those services when sold by the importer or
15 purchaser is subject to the tax imposed under
16 chapter 237;

17 B) A manufacturer importing or purchasing
18 services or contracting that become identifiable
19 elements, excluding overhead, of the finished or
20 saleable manufactured product (including the
21 container or package in which the product is
22 contained) and the finished or saleable product
23 is to be sold in a manner that results in a
24 further tax under chapter 237 on the activity of
25 the manufacturer as a retailer; or

26 C) A contractor importing or purchasing services
27 or contracting that become identifiable elements,

1 excluding overhead, of the finished work or
2 project required, under the contract, and where
3 the gross proceeds derived by the contractor are
4 subject to the tax under section 237-13(3) as a
5 contractor,

6 the tax shall be one-half of one per cent of the value
7 of the imported or purchased services or contracting.

8 **§238A-4 Application of Tax, etc.** Section 238-3 shall be
9 applicable for this chapter.

10 **§238A-5 Certain property used by producers.** If a licensed
11 producer, or a cooperative association acting under the
12 authority of chapter 421 or 422, in order to sell to such
13 producer, or a licensed person, imports into the State or
14 acquires in the State commodities, materials, items, services,
15 or living things enumerated in section 237-4(3) and (5) to (7),
16 then section 237-4 shall apply. If section 237-4 applies and the
17 producer is engaged in the sale of the producer's products at
18 retail or in any manner other than at wholesale, then the tax
19 upon use of property in the State imposed by section 238-2 shall
20 apply the same as in the case of a purchaser who is a licensed
21 retailer. In other such cases no tax shall be imposed under this
22 chapter.

23 **§238A-6 Administration.** (a) Sections 238-5, 238-6, 238-
24 7, 238-8, 238-9, 238-9.5, 238-10, 238-11, 238-13, 238-14 and
25 238-16 shall be applicable for this chapter."

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1 SECTION 21. Chapter 255D, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§ 255D-00 RELIEF FROM CERTAIN LIABILITY. All sellers
5 and certified service providers (CSPs) as defined in section
6 255D-2 using databases pursuant to section 255D-00(f) and (g)
7 shall be relieved from liability to the state and local
8 jurisdictions for having charged and collected the incorrect
9 amount of general excise or use tax resulting from the seller or
10 certified service provider relying on erroneous data provided by
11 the state on tax rates, boundaries, or taxing jurisdiction
12 assignments.

13 "255D-00 ROUNDING RULE. The department of taxation
14 adopts a rounding algorithm for general excise and use taxes
15 with the following criteria:

- 16 (a) Tax computation must be carried to the third
17 decimal place, and
18 (b) The tax must be rounded to a whole cent using a
19 method that rounds up to the next cent whenever
20 the third decimal place is greater than four.

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1 Sellers may elect to compute the tax due on a transaction on an
2 item or an invoice basis, and shall allow the rounding rule to
3 be applied to the aggregated state and local taxes.

4 "255D-00 Amnesty for registration under Section 255D. (a)

5 Amnesty for uncollected or unpaid general excise under chapter
6 237 or use tax under chapter 238, including any county
7 surcharge, to a seller who registers to pay or to collect and
8 remit applicable general excise or use tax on sales made to
9 purchasers in the state in accordance with the terms of the
10 Streamlined Sales and Use Tax Agreement ("Agreement"), provided
11 that the seller was not so registered in the state in the
12 twelve-month period preceding the effective date of the state's
13 participation in the Agreement.

14 (b) The amnesty will preclude assessment for uncollected or
15 unpaid general excise tax under chapter 237 or use tax under
16 chapter 238 together with penalty or interest for sales made
17 during the period the seller was not registered in the state,
18 provided registration occurs within twelve months of the
19 effective date of the state's participation in the Agreement.

20 (c) The amnesty is not available to a seller with respect to any
21 matter or matters for which the seller received notice of the
22 commencement of an audit and which audit is not yet finally

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1 resolved including any related administrative and judicial
2 processes.

3 (d) The amnesty is not available for general excise or use
4 taxes already paid or remitted to the state or to taxes
5 collected by the seller.

6 (e) The amnesty is fully effective, absent the seller's fraud or
7 intentional misrepresentation of a material fact, as long as the
8 seller continues registration and continues payment or
9 collection and remittance of applicable general excise or use
10 taxes for a period of at least thirty-six months. The statute of
11 limitations is tolled with respect to asserting a tax liability
12 during this thirty-six month period.

13 (f) The amnesty is applicable only to general excise or use
14 taxes due from a seller in its capacity as a seller and not to
15 sales or use taxes due from a seller in its capacity as a buyer.

16 **"255D-000 LOCAL RATE AND BOUNDARY CHANGES.**

17 (a) Any rate changes by a county will be effective only on
18 the first day of a calendar quarter after a minimum of
19 sixty days' notice to sellers.

20 (b) Any county tax rate changes to purchases from printed
21 catalogs wherein the purchaser computed the tax based upon
22 county tax rates published in the catalog only on the first

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1 day of a calendar quarter after a minimum of one hundred
2 twenty days' notice to sellers.

3 (c) For general excise and use tax purposes only, local
4 jurisdiction boundary changes apply only on the first day
5 of a calendar quarter after a minimum of sixty days' notice
6 to sellers.

7 (d) The department of taxation will provide and maintain a
8 database that describes boundary changes for all taxing
9 jurisdictions. This database shall include a description of
10 the change and the effective date of the change for general
11 excise tax under chapter 237 and use tax under chapter 238
12 purposes.

13 (e) The department of taxation will provide and maintain a
14 database of all general excise tax rates under chapter 237
15 and use tax rates under chapter 238 for all of the
16 jurisdictions levying taxes within the state. For the
17 identification of states, counties, and cities, codes
18 corresponding to the rates must be provided according to
19 Federal Information Processing Standards (FIPS) as
20 developed by the National Institute of Standards and
21 Technology. For the identification of all other
22 jurisdictions, codes corresponding to the rates must be in

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1 the format determined by the Streamlined Sales Tax
2 Governing Board.

3 (f) The department of taxation will provide and maintain
4 a database that assigns each five digit and nine digit zip code
5 within the state to the proper tax rates and jurisdictions. The
6 department of taxation will apply the lowest combined tax rate
7 imposed in the zip code area if the area includes more than one
8 tax rate in any level of taxing jurisdictions. If a nine digit
9 zip code designation is not available for a street address or if
10 a seller or CSP is unable to determine the nine digit zip code
11 designation of a purchaser after exercising due diligence to
12 determine the designation, the seller or CSP may apply the rate
13 for the five digit zip code area. For the purposes of this
14 section, there is a rebuttable presumption that a seller or CSP
15 has exercised due diligence if the seller has attempted to
16 determine the nine digit zip code designation by utilizing
17 software approved by the Streamlined Sales Tax Governing Board
18 that makes this designation from the street address and the five
19 digit zip code of the purchaser.

20 The state will participate with other states in the development
21 of an address-based system for assigning taxing jurisdictions.
22 The system must meet the requirements developed pursuant to the

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1 federal Mobile Telecommunications Sourcing Act (4 U.S.C. Sec.
2 119(a)). If any state develops an address-based assignment
3 system pursuant to the Mobile Telecommunications Sourcing Act, a
4 seller may use that system in place of the system provided for
5 in subsection (e) of this section.

6 SECTION 22. The Hawaii Revised Statutes is amended by
7 adding a new chapter to be appropriately designated, entitled
8 "Insurance Producer's Tax" and to read as follows:

9 **§237B-1 Definitions.** The definitions contained in
10 sections 237-1, 237-2 and 237-3 shall be applicable for this
11 chapter.

12 **§237B-2__ Tax on insurance producers.** Upon every person
13 engaged as a licensed producer pursuant to chapter 431, there is
14 hereby levied and shall be assessed and collected a tax equal to
15 0.15 per cent of the commissions due to that activity.

16 **§237B-3__ Apportionment.** Where insurance agents, including
17 general agents, subagents, or solicitors, who are not employees
18 and are licensed pursuant to chapter 431, produce commissions
19 which are divided between such general agents, subagents, or
20 solicitors, as the case may be, the tax levied under section
21 237B-2__ as to insurance general agents, subagents, or

