



# The Senate

STATE CAPITOL  
HONOLULU, HAWAII 96813

February 27, 2012

## MEMORANDUM

TO: Mr. Randall Iwase, Chair  
Hawaii Tax Review Commission

FROM: Senator Carol Fukunaga, Chair  
Senate Economic Development and Technology Committee

Senator David Ige, Chair  
Senate Ways and Means Committee

Re: Senate Request for Topics to be included in 2011-2012 Tax Review  
Commission Studies

We would appreciate the 2011-2012 Tax Review Commission's analyses of the following issues as part of its studies on Hawaii's tax structure and recommendations to the 2013 State Legislature:

1. State general excise tax (Chapter 235, Hawaii Revised Statutes): The state's general excise tax covers a broad base of goods and services transactions, and has often been viewed by other states as a more effective tax system for the types of goods and services in modern state economies.

We would appreciate your Tax Review Commission's evaluation of the efficacy of the current GET system, a comparison of its rate structure against other states' sales tax rates, the extent to which GET taxes are borne by visitors to Hawaii and its impact upon local residents, and recommendations for changes to the state's GET tax structure to meet the state's operating requirements for the next 25 years.

2. State use tax on out-of-state purchases (Section 238-2, Hawaii Revised Statutes): Previous Tax Review Commissions have reviewed whether or not Hawaii should participate in the national Streamlined Sales and Use Tax Agreement (SSUTA) and provided differing recommendations.

We would appreciate your Commission's evaluation of the level of Hawaii use taxes that have been uncollected from 2006-2012, and an estimate of the level of projected use taxes on out-of-state purchases made by Hawaii residents between 2012-2020. What statutory and/or technological changes are needed to assist the State of Hawaii in collecting its uncollected use taxes?

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**§238-2 Imposition of tax on tangible personal property; exemptions.** There is hereby levied an excise tax on the use in this State of tangible personal property which is imported by a taxpayer in this State whether owned, purchased from an unlicensed seller, or however acquired for use in this State. The tax imposed by this chapter shall accrue when the property is acquired by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rates of the tax hereby imposed and the exemptions thereof are as follows:

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

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

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

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

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

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

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

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

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

(E) A publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials, the tax shall be one-half of one per cent of the purchase price of the property, if the purchase and

sale are consummated in Hawaii; or, if there is no purchase price applicable thereto, or if the purchase or sale is consummated outside of Hawaii, then one-half of one per cent of the value of such property; and

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

For purposes of this section, tangible personal property is property that is imported by the taxpayer for use in this State, notwithstanding the fact that title to the property, or the risk of loss to the property, passes to the purchaser of the property at a location outside this State. [L 1965, c 155, pt of §2; Supp, §119-2; HRS §238-2; gen ch 1985; am L 1999, c 71, §8; am L 2000, c 198, §8 and c 271, §2; am L 2004, c 114, §3]

#### **Note**

The 2004 amendment is retroactive to taxable years beginning after December 31, 1998. L 2004, c 114, §7.

#### **Attorney General Opinions**

General excise and use taxes may be applied to imported goods, no longer in transit, regardless of whether imported goods are in their original packages. Att. Gen. Op. 94-2.

#### **Case Notes**

Calculation of purchase price and freight charges held to be fair reflection of value of imported equipment. 56 H. 621, 547 P.2d 2.

Freight charges may be properly included in determining "value", the use tax base; such inclusion does not impose burden on interstate commerce. 56 H. 621, 547 P.2d 2.

Parts imported by taxpayer and used in its repair and maintenance work did not, under the record, constitute goods imported for resale. 58 H. 163, 566 P.2d 1091.

Where appellant argued that use tax imposed on its imported food products pursuant to chapter 238 violated commerce clause, appellant was treated equally with similarly situated taxpayers. 76 H. 1, 868 P.2d 419.

Under the plain language of §238-1, Delaware corporation was not subject to the use tax where the sale of books was directly from the corporation to the state library; the corporation did not import the books from an unlicensed seller, nor did it purchase the books and "resell" the goods to the library and thus could not have imported from itself or purchased from itself. 103 H. 359, 82 P.3d 804.