
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Chapter 245, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 **"§245- Taxation of modified risk tobacco products.**
5 Notwithstanding any law to the contrary, a fifty per cent tax
6 shall be imposed on any product for which a modified risk
7 tobacco product order has been issued by the Secretary of the
8 United States Department of Health and Human Services pursuant
9 to title 21 United States Code section 387k(g)."

10 SECTION 2. Section 237-24, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§237-24 Amounts not taxable.** This chapter shall not
13 apply to the following amounts:
14 (1) Amounts received under life insurance policies and
15 contracts paid by reason of the death of the insured;
16 (2) Amounts received (other than amounts paid by reason of
17 death of the insured) under life insurance, endowment,



1 or annuity contracts, either during the term or at
2 maturity or upon surrender of the contract;
3 (3) Amounts received under any accident insurance or
4 health insurance policy or contract or under workers'
5 compensation acts or employers' liability acts, as
6 compensation for personal injuries, death, or
7 sickness, including also the amount of any damages or
8 other compensation received, whether as a result of
9 action or by private agreement between the parties on
10 account of the personal injuries, death, or sickness;
11 (4) The value of all property of every kind and sort
12 acquired by gift, bequest, or devise, and the value of
13 all property acquired by descent or inheritance;
14 (5) Amounts received by any person as compensatory damages
15 for any tort injury to the person, or to the person's
16 character reputation, or received as compensatory
17 damages for any tort injury to or destruction of
18 property, whether as the result of action or by
19 private agreement between the parties (provided that
20 amounts received as punitive damages for tort injury



- 1 or breach of contract injury shall be included in
2 gross income);
- 3 (6) Amounts received as salaries or wages for services
4 rendered by an employee to an employer;
- 5 (7) Amounts received as alimony and other similar payments
6 and settlements;
- 7 (8) Amounts collected by distributors as fuel taxes on
8 "liquid fuel" imposed by chapter 243, and the amounts
9 collected by such distributors as a fuel tax imposed
10 by any Act of the Congress of the United States;
- 11 (9) Taxes on liquor imposed by chapter 244D on dealers
12 holding permits under that chapter;
- 13 (10) The amounts of taxes on cigarettes [~~and~~], tobacco
14 products, e-liquid cartridges, and open system e-
15 liquid imposed by chapter 245 on wholesalers or
16 dealers holding licenses under that chapter and
17 selling the products at wholesale;
- 18 (11) Federal excise taxes imposed on articles sold at
19 retail and collected from the purchasers thereof and
20 paid to the federal government by the retailer;



- 1 (12) The amounts of federal taxes under chapter 37 of the
2 Internal Revenue Code, or similar federal taxes,
3 imposed on sugar manufactured in the State, paid by
4 the manufacturer to the federal government;
- 5 (13) An amount up to, but not in excess of, \$2,000 a year
6 of gross income received by any blind, deaf, or
7 totally disabled person engaging, or continuing, in
8 any business, trade, activity, occupation, or calling
9 within the State; a corporation all of whose
10 outstanding shares are owned by an individual or
11 individuals who are blind, deaf, or totally disabled;
12 a general, limited, or limited liability partnership,
13 all of whose partners are blind, deaf, or totally
14 disabled; or a limited liability company, all of whose
15 members are blind, deaf, or totally disabled;
- 16 (14) Amounts received by a producer of sugarcane from the
17 manufacturer to whom the producer sells the sugarcane,
18 where:
- 19 (A) The producer is an independent cane farmer, so
20 classed by the Secretary of Agriculture under the



1 Sugar Act of 1948 (61 Stat. 922, chapter 519) as
2 the Act may be amended or supplemented;

3 (B) The value or gross proceeds of sale of the sugar,
4 and other products manufactured from the
5 sugarcane, is included in the measure of the tax
6 levied on the manufacturer under section
7 237-13(1) or (2);

8 (C) The producer's gross proceeds of sales are
9 dependent upon the actual value of the products
10 manufactured therefrom or the average value of
11 all similar products manufactured by the
12 manufacturer; and

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

16 (15) Money paid by the State or eleemosynary child-placing
17 organizations to foster parents for their care of
18 children in foster homes;

19 (16) Amounts received by a cooperative housing corporation
20 from its shareholders in reimbursement of funds paid
21 by such corporation for lease rental, real property



1 taxes, and other expenses of operating and maintaining
2 the cooperative land and improvements; provided that
3 such a cooperative corporation is a corporation:
4 (A) Having one and only one class of stock
5 outstanding;
6 (B) Each of the stockholders of which is entitled
7 solely by reason of the stockholder's ownership
8 of stock in the corporation, to occupy for
9 dwelling purposes a house, or an apartment in a
10 building owned or leased by the corporation; and
11 (C) No stockholder of which is entitled (either
12 conditionally or unconditionally) to receive any
13 distribution not out of earnings and profits of
14 the corporation except in a complete or partial
15 liquidation of the corporation; and
16 (17) Amounts received by a contractor of the Patient-
17 Centered Community Care program that is established by
18 the United States Department of Veterans Affairs
19 pursuant to title 38 United States Code section 8153,
20 as amended, for the actual costs or advancements to



1 third party health care providers pursuant to a
2 contract with the United States."

3 SECTION 3. Section 237-25, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Any provision of law to the contrary notwithstanding,
6 there shall be exempted from, and excluded from the measures of,
7 the tax imposed by chapter 237 all sales, and the gross proceeds
8 of all sales, of:

9 (1) Intoxicating liquor, as defined in chapter 281,
10 hereafter sold by any person licensed under chapter
11 281 to the United States (including any agency or
12 instrumentality of the United States that is wholly
13 owned or otherwise so constituted as to be immune from
14 the levy of a tax under chapter 238 or 244D but not
15 including national banks), or to any organization to
16 which that sale is permitted by the proviso of "Class
17 3" of section 281-31, located on any Army, Navy, or
18 Air Force reservation, but the person making the sale
19 shall nevertheless, within the meaning of chapters
20 237, 244D, and 281 be deemed to be a licensed seller;



- 1 (2) Tobacco products [~~and~~], cigarettes, e-liquid
2 cartridges, and open system e-liquid, as defined in
3 chapter 245, sold by any person licensed under the
4 chapter to the United States (including any agency or
5 instrumentality thereof that is wholly owned or
6 otherwise so constituted as to be immune from the levy
7 of a tax under chapter 238 or 245 but not including
8 national banks), but the person making the sale shall
9 nevertheless, within the meaning of chapters 237 and
10 245, be deemed to be a licensed seller;
- 11 (3) Other tangible personal property sold by any person
12 licensed under this chapter to the United States
13 (including any agency, instrumentality, or federal
14 credit union thereof but not including national
15 banks), and to any state-chartered credit union, but
16 the person making such sale shall nevertheless, within
17 the meaning of this chapter, be deemed a licensed
18 seller; and
- 19 (4) When the amount of property sold by a licensee turns
20 upon the amount of the property sold through a vending
21 machine or similar device to the customer using the



1 device, there shall not be deemed to have occurred any
2 sale covered by an exemption under paragraph (1), (2),
3 or (3)."

4 SECTION 4. Section 238-3, Hawaii Revised Statutes, is
5 amended by amending subsection (g) to read as follows:

6 "(g) The tax imposed by this chapter shall not apply to
7 any intoxicating liquor as defined in chapter 244D and
8 cigarettes [~~and~~], tobacco products, e-liquid cartridges, and
9 open system e-liquid as defined in chapter 245, imported into
10 the State and sold to any person or common carrier in interstate
11 commerce, whether ocean-going or air, for consumption out-of-
12 state by the person, crew, or passengers on the shipper's
13 vessels or airplanes."

14 SECTION 5. Chapter 245, Hawaii Revised Statutes, is
15 amended by amending its title to read as follows:

16 "CHAPTER 245
17 CIGARETTE TAX [~~AND~~], TOBACCO TAX, AND
18 E-LIQUID TAX LAW"

19 SECTION 6. Section 245-1, Hawaii Revised Statutes, is
20 amended as follows:



1 1. By adding five new definitions to be appropriately
2 inserted and to read:

3 "E-liquid" means any solution containing nicotine that is
4 designed or sold for use with an electronic smoking device.

5 "E-liquid cartridge" means any prefilled and sealed
6 disposable container of e-liquid that can be used with an
7 electronic smoking device.

8 "Electronic smoking device" means any electronic product
9 that can be used to aerosolize and deliver nicotine or other
10 substances to the person inhaling from the device, including an
11 electronic cigarette, electronic cigar, electronic cigarillo, or
12 electronic pipe, and any cartridge or other component of the
13 device or related product.

14 "Open system e-liquid" means e-liquid that is not sold in a
15 cartridge.

16 "Unit of open system e-liquid" means any measurable amount
17 of open system e-liquid."

18 2. By amending the definition of "business location" or
19 "place of business" to read:

20 "Business location" or "place of business" means the
21 entire premises occupied by a retail tobacco and e-liquid permit



1 applicant or an entity required to hold a retail tobacco and e-
2 liquid permit under this chapter and shall include but is not
3 limited to any store, stand, outlet, vehicle, cart, location,
4 vending machine, or structure from which cigarettes [~~or~~],
5 tobacco products, electronic smoking devices, e-liquid
6 cartridges, or units of open system e-liquid are sold or
7 distributed to a consumer."

8 3. By amending the definition of "consumer" to read:

9 ""Consumer" means a person who acquires or possesses a
10 cigarette [~~or~~], a tobacco product, an electronic smoking device,
11 or e-liquid for personal consumption and not for resale or
12 distribution."

13 4. By amending the definition of "dealer" to read:

14 ""Dealer" means any person coming into the possession of
15 cigarettes [~~or~~], tobacco products [~~which~~], electronic smoking
16 devices, e-liquid cartridges, or units of open system e-liquid
17 that have not been acquired from an authorized permit holder or
18 licensee under this chapter, or any person rendering a
19 distribution service who buys and maintains, at the person's
20 place of business, a stock of cigarettes [~~or~~], tobacco products,
21 electronic smoking devices, e-liquid cartridges, or units of



1 open system e-liquid that have not been acquired from a licensee
2 and who distributes or uses [~~such~~] cigarettes [~~or~~], tobacco
3 products[~~],~~ electronic smoking devices, e-liquid cartridges, or
4 units of open system e-liquid."

5 5. By amending the definition of "license" to read:

6 ""License" means a license granted under this chapter[~~]~~
7 that authorizes the holder to engage in the business of a
8 wholesaler or dealer of cigarettes [~~or~~], tobacco products,
9 electronic smoking devices, or e-liquid in the State. For
10 purposes of any action brought pursuant to section 231-35, the
11 term "license" shall include a retail tobacco and e-liquid
12 permit required under this chapter."

13 6. By amending the definition of "permittee" to read:

14 ""Permittee" means the holder of a retail tobacco and e-
15 liquid permit in accordance with this chapter."

16 7. By amending the definition of "retailer" to read:

17 ""Retailer" means an entity that engages in the practice of
18 selling cigarettes [~~or~~], tobacco products, electronic smoking
19 devices, or e-liquid to consumers and includes the owner of a
20 cigarette [~~or~~], tobacco product, electronic smoking device, e-
21 liquid cartridges, or open system e-liquid vending machine."



1 8. By amending the definition of "retail sale" or "tobacco
2 retailing" to read:

3 ""Retail sale" or "~~[tobacco]~~ retailing" means the practice
4 of selling cigarettes ~~[or]~~, tobacco products, electronic smoking
5 devices, or e-liquid to consumers and includes the sale of
6 cigarettes ~~[or]~~, tobacco, electronic smoking devices, e-liquid
7 cartridges, or open system e-liquid through a vending machine."

8 9. By amending the definition of "retail tobacco permit"
9 to read:

10 ""Retail tobacco and e-liquid permit" means a permit
11 granted under this chapter that authorizes an entity to engage
12 in the business of selling cigarettes ~~[and]~~, tobacco products,
13 and e-liquid to consumers."

14 10. By amending the definition of "sale" or "sold" to
15 read:

16 ""Sale" or "sold" includes any delivery of cigarettes ~~[or]~~,
17 tobacco products, electronic smoking devices, or e-liquid,
18 whether cash is actually paid therefor or not."

19 11. By amending the definition of "wholesale price" to
20 read:



1 ""Wholesale price", in addition to any other meaning of the
2 term, means in the case of a tax upon the use of tobacco
3 products, e-liquid cartridges, or open system e-liquid, or upon
4 a sale not made at wholesale:

5 (1) If made by a person who during the month preceding the
6 accrual of the tax made substantial sales to retailers
7 of like tobacco products, e-liquid cartridges, or open
8 system e-liquid, the average price of the sales[7];
9 and

10 (2) If made by any other person, the average price of
11 sales to retailers of like tobacco products, e-liquid
12 cartridges, or open system e-liquid made by other
13 taxpayers in the same county during the month
14 preceding the accrual of the tax."

15 12. By amending the definition of "wholesaler" to read:

16 ""Wholesaler" means a person rendering a distribution
17 service who buys and maintains, at the person's place of
18 business, a stock of cigarettes [~~or~~], tobacco products,
19 electronic smoking devices, or e-liquid that the person uses,
20 possesses, or distributes only to retailers, or other
21 wholesalers, or both."



1 SECTION 7. Section 245-2.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~§~~245-2.5] **Retail tobacco and e-liquid permit.** (a)
4 [~~Beginning December 1, 2006, every~~] Every retailer engaged in
5 the retail sale of cigarettes [~~and other~~], tobacco products, e-
6 liquid cartridges, or open system e-liquid upon which a tax is
7 required to be paid under this chapter shall obtain a retail
8 tobacco and e-liquid permit.

9 (b) [~~Beginning March 1, 2007, it~~] It shall be unlawful for
10 any retailer engaged in the retail sale of cigarettes [~~and~~
11 ~~other~~], tobacco products, e-liquid cartridges, or open system e-
12 liquid upon which a tax is required to be paid under this
13 chapter to sell, possess, keep, acquire, distribute, or
14 transport cigarettes [~~or other~~], tobacco products, e-liquid
15 cartridges, or open system e-liquid for retail sale unless a
16 retail tobacco and e-liquid permit has been issued to the
17 retailer under this section and the retail tobacco and e-liquid
18 permit is in full force and effect.

19 (c) The retail tobacco and e-liquid permit shall be issued
20 by the department upon application by the retailer in the form
21 and manner prescribed by the department, and the payment of a



1 fee of \$20. Permits shall be valid for one year, from December
2 1 to November 30, and renewable annually. Whenever a retail
3 tobacco and e-liquid permit is defaced, destroyed, or lost, or
4 the permittee relocates the permittee's business, the department
5 may issue a duplicate retail tobacco and e-liquid permit to the
6 permittee for a fee of \$5 per copy.

7 (d) A separate retail tobacco and e-liquid permit shall be
8 obtained for each place of business owned, controlled, or
9 operated by a retailer. A retailer that owns or controls more
10 than one place of business may submit a single application for
11 more than one retail tobacco and e-liquid permit. Each retail
12 tobacco and e-liquid permit issued shall clearly describe the
13 place of business where the operation of the business is
14 conducted.

15 (e) Any entity that operates as a dealer or wholesaler and
16 also sells cigarettes [~~or other~~], tobacco products, e-liquid
17 cartridges, or open system e-liquid to consumers at retail shall
18 acquire a separate retail tobacco and e-liquid permit.

19 (f) A retail tobacco and e-liquid permit shall be
20 nonassignable and nontransferable from one entity to another
21 entity. A retail tobacco and e-liquid permit may be transferred



1 from one business location to another business location after an
2 application has been filed with the department requesting that
3 transfer and approval has been obtained from the department.

4 (g) A retail tobacco and e-liquid permit issued under this
5 section shall be displayed at all times in a conspicuous place
6 at the place of business requiring the retail tobacco and e-
7 liquid permit.

8 (h) Any sales of cigarettes [~~or~~], tobacco products, e-
9 liquid cartridges, or open system e-liquid made through a
10 cigarette [~~or~~], tobacco product, electronic smoking device, e-
11 liquid cartridge, or open system e-liquid vending machine are
12 subject to the terms, conditions, and penalties of this chapter.
13 A retail tobacco and e-liquid permit need not be displayed on
14 cigarette [~~or~~], tobacco product, electronic smoking device, e-
15 liquid cartridge, or open system e-liquid vending machines if
16 the retail tobacco and e-liquid permit holder is the owner of
17 the cigarette [~~or~~], tobacco product, electronic smoking device,
18 e-liquid cartridge, or open system e-liquid vending machines and
19 the [~~cigarette or tobacco product~~] vending machines are operated
20 at the location described in the retail tobacco and e-liquid
21 permit.



1 (i) No retailer shall purchase any pack of cigarettes
2 without the appropriate tax stamp being affixed to the bottom of
3 the pack as required by this chapter.

4 (j) A vehicle from which cigarettes ~~[or]~~, tobacco
5 products, e-liquid cartridges, or units of open system e-liquid
6 are sold is considered a place of business and requires a retail
7 tobacco and e-liquid permit. Retail tobacco and e-liquid
8 permits for a vehicle shall be issued bearing a specific motor
9 vehicle identification number and are valid only when physically
10 carried in the vehicle having the corresponding motor vehicle
11 identification number. Retail tobacco and e-liquid permits for
12 vehicles shall not be moved from one vehicle to another.

13 (k) A permittee shall be subject to the inspection and
14 investigation requirements of this chapter and shall provide the
15 department or the attorney general with any information deemed
16 necessary to verify compliance with the requirements of this
17 chapter.

18 (l) A permittee shall keep a complete and accurate record
19 of the permittee's cigarette ~~[or]~~, tobacco product, e-liquid
20 cartridge, or open system e-liquid inventory. The records
21 shall:



- 1 (1) Include:
- 2 (A) A written statement containing the name and
- 3 address of the permittee's source of its
- 4 cigarettes [~~and~~], tobacco products[+], e-liquid
- 5 cartridges, and open system e-liquid;
- 6 (B) The date of delivery, quantity, trade name or
- 7 brand, and price of the cigarettes [~~and~~], tobacco
- 8 products[+], e-liquid cartridges, and open system
- 9 e-liquid; and
- 10 (C) Documentation in the form of any purchase orders,
- 11 invoices, bills of lading, other written
- 12 statements, books, papers, or records in whatever
- 13 format, including electronic format, which
- 14 substantiate the purchase or acquisition of the
- 15 cigarettes [~~and~~], tobacco products, e-liquid
- 16 cartridges, and open system e-liquid stored or
- 17 offered for sale; and
- 18 (2) Be offered for inspection and examination within
- 19 twenty-four hours of demand by the department or the
- 20 attorney general, and shall be preserved for a period
- 21 of three years; provided that:



1 (A) Specified records may be destroyed if the
2 department and the attorney general both consent
3 to their destruction within the three-year
4 period; and

5 (B) Either the department or the attorney general may
6 adopt rules pursuant to chapter 91 that require
7 specified records to be kept longer than a period
8 of three years.

9 (m) The department may suspend or, after hearing, revoke
10 or decline to renew any retail tobacco and e-liquid permit
11 issued under this chapter whenever the department finds that the
12 applicant or permittee has failed to comply with this chapter or
13 any rule adopted under this chapter, or for any other good
14 cause. Good cause includes [~~but is not limited to~~] to instances
15 where an applicant or permittee has:

- 16 (1) Submitted a false or fraudulent application or
17 provided a false statement in an application; or
- 18 (2) Possessed or displayed a false or fraudulent retail
19 tobacco and e-liquid permit.

20 Upon suspending or revoking any retail tobacco and e-liquid
21 permit, the department shall request that the permittee



1 immediately surrender any retail tobacco and e-liquid permit or
2 duplicate issued to the permittee, and the permittee shall
3 surrender the permit or duplicate promptly to the department as
4 requested.

5 (n) Whenever the department suspends, revokes, or declines
6 to renew a retail tobacco and e-liquid permit, the department
7 shall notify the applicant or permittee immediately and afford
8 the applicant or permittee a hearing, if requested and if a
9 hearing has not already been afforded. After the hearing, the
10 department shall:

- 11 (1) Rescind its order of suspension;
- 12 (2) Continue the suspension;
- 13 (3) Revoke the retail tobacco and e-liquid permit;
- 14 (4) Rescind its order of revocation;
- 15 (5) Decline to renew the retail tobacco and e-liquid
16 permit; or
- 17 (6) Renew the retail tobacco and e-liquid permit.

18 (o) Any cigarette, package of cigarettes, carton of
19 cigarettes, container of cigarettes, tobacco product, package of
20 tobacco products, [~~or any~~] container of tobacco products, e-
21 liquid cartridges, package of e-liquid cartridges, or unit of



1 open system e-liquid unlawfully sold, possessed, kept, stored,
2 acquired, distributed, or transported in violation of this
3 section may be seized and ordered forfeited pursuant to chapter
4 712A."

5 SECTION 8. Section 245-2.6, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "~~{}~~§245-2.6~~{}~~ **Unlawful tobacco or e-liquid retailing in**
8 **the first degree.** (a) [~~Beginning March 1, 2007, a~~] A person or
9 entity required to obtain a retail tobacco and e-liquid permit
10 commits the offense of unlawful tobacco or e-liquid retailing in
11 the first degree if the person or entity knowingly fails to
12 obtain a valid permit required under section 245-2.5 and, for
13 the purposes of retail sale, recklessly sells, possesses,
14 stores, acquires, distributes, or transports five thousand or
15 more cigarettes.

16 (b) Unlawful tobacco or e-liquid retailing in the first
17 degree is a misdemeanor, except that any offense under
18 [~~subsection (a)~~] this section that occurs within five years of a
19 prior conviction for [~~unlawful tobacco retailing in the first~~
20 ~~degree~~] an offense under this section is a class C felony."



1 SECTION 9. Section 245-2.7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~§~~245-2.7] **Unlawful tobacco or e-liquid retailing in**
4 **the second degree.** (a) [~~Beginning March 1, 2007, a~~] A person
5 or entity required to obtain a retail tobacco and e-liquid
6 permit commits the offense of unlawful tobacco or e-liquid
7 retailing in the second degree if the person or entity
8 recklessly fails to obtain a valid permit required under section
9 245-2.5 and, for the purposes of retail sale, recklessly sells,
10 possesses, stores, acquires, distributes, or transports [~~fewer~~]:

- 11 (1) Fewer than five thousand cigarettes; or [~~any~~]
12 (2) Any quantity of tobacco products[~~+~~], e-liquid
13 cartridges, or open system e-liquid."

14 (b) Unlawful tobacco or e-liquid retailing in the second
15 degree is [~~a~~] petty misdemeanor, except that any offense
16 under [~~subsection (a)~~] this section that occurs within five
17 years of a prior conviction for [~~unlawful tobacco retailing in~~
18 ~~the first or second degree~~] an offense under this section or
19 section 245-2.6 is a misdemeanor."

20 SECTION 10. Section 245-3, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§245-3 Taxes.** (a) Every wholesaler or dealer, in
2 addition to any other taxes provided by law, shall pay for the
3 privilege of conducting business and other activities in the
4 State:

5 (1) An excise tax equal to 5.00 cents for each cigarette
6 sold, used, or possessed by a wholesaler or dealer
7 after June 30, 1998, whether or not sold at wholesale,
8 or if not sold then at the same rate upon the use by
9 the wholesaler or dealer;

10 (2) An excise tax equal to 6.00 cents for each cigarette
11 sold, used, or possessed by a wholesaler or dealer
12 after September 30, 2002, whether or not sold at
13 wholesale, or if not sold then at the same rate upon
14 the use by the wholesaler or dealer;

15 (3) An excise tax equal to 6.50 cents for each cigarette
16 sold, used, or possessed by a wholesaler or dealer
17 after June 30, 2003, whether or not sold at wholesale,
18 or if not sold then at the same rate upon the use by
19 the wholesaler or dealer;

20 (4) An excise tax equal to 7.00 cents for each cigarette
21 sold, used, or possessed by a wholesaler or dealer



- 1 after June 30, 2004, whether or not sold at wholesale,
2 or if not sold then at the same rate upon the use by
3 the wholesaler or dealer;
- 4 (5) An excise tax equal to 8.00 cents for each cigarette
5 sold, used, or possessed by a wholesaler or dealer on
6 and after September 30, 2006, whether or not sold at
7 wholesale, or if not sold then at the same rate upon
8 the use by the wholesaler or dealer;
- 9 (6) An excise tax equal to 9.00 cents for each cigarette
10 sold, used, or possessed by a wholesaler or dealer on
11 and after September 30, 2007, whether or not sold at
12 wholesale, or if not sold then at the same rate upon
13 the use by the wholesaler or dealer;
- 14 (7) An excise tax equal to 10.00 cents for each cigarette
15 sold, used, or possessed by a wholesaler or dealer on
16 and after September 30, 2008, whether or not sold at
17 wholesale, or if not sold then at the same rate upon
18 the use by the wholesaler or dealer;
- 19 (8) An excise tax equal to 13.00 cents for each cigarette
20 sold, used, or possessed by a wholesaler or dealer on
21 and after July 1, 2009, whether or not sold at



1 wholesale, or if not sold then at the same rate upon
2 the use by the wholesaler or dealer;

3 (9) An excise tax equal to 11.00 cents for each little
4 cigar sold, used, or possessed by a wholesaler or
5 dealer on and after October 1, 2009, whether or not
6 sold at wholesale, or if not sold then at the same
7 rate upon the use by the wholesaler or dealer;

8 (10) An excise tax equal to 15.00 cents for each cigarette
9 or little cigar sold, used, or possessed by a
10 wholesaler or dealer on and after July 1, 2010,
11 whether or not sold at wholesale, or if not sold then
12 at the same rate upon the use by the wholesaler or
13 dealer;

14 (11) An excise tax equal to 16.00 cents for each cigarette
15 or little cigar sold, used, or possessed by a
16 wholesaler or dealer on and after July 1, 2011,
17 whether or not sold at wholesale, or if not sold then
18 at the same rate upon the use by the wholesaler or
19 dealer;

20 (12) An excise tax equal to seventy per cent of the
21 wholesale price of each article or item of tobacco



1 products, other than large cigars, sold by the
2 wholesaler or dealer on and after September 30, 2009,
3 whether or not sold at wholesale, or if not sold then
4 at the same rate upon the use by the wholesaler or
5 dealer; [~~and~~]

6 (13) An excise tax equal to fifty per cent of the wholesale
7 price of each large cigar of any length, sold, used,
8 or possessed by a wholesaler or dealer on and after
9 September 30, 2009, whether or not sold at wholesale,
10 or if not sold then at the same rate upon the use by
11 the wholesaler or dealer[~~-~~];

12 (14) An excise tax equal to 25.00 cents for each e-liquid
13 cartridge sold, used, or possessed by a wholesaler or
14 dealer on and after July 1, 2021, whether or not sold
15 at wholesale, or if not sold then at the same rate
16 upon the use by the wholesaler or dealer; and

17 (15) An excise tax equal to fifteen per cent of the
18 wholesale price of each unit of open system e-liquid
19 sold, used, or possessed by a wholesaler or dealer on
20 and after July 1, 2021, whether or not sold at



1 wholesale, or if not sold then at the same rate upon
2 the use by the wholesaler or dealer.

3 Where the tax imposed has been paid on cigarettes, little
4 cigars, [~~or~~] tobacco products, e-liquid cartridges, or units of
5 open system e-liquid that thereafter become the subject of a
6 casualty loss deduction allowable under chapter 235, the tax
7 paid shall be refunded or credited to the account of the
8 wholesaler or dealer. The tax shall be applied to cigarettes
9 through the use of stamps.

10 (b) The taxes, however, are subject to the following
11 limitations:

12 (1) The measure of the taxes shall not include any
13 cigarettes [~~or~~], tobacco products, e-liquid
14 cartridges, or units of open system e-liquid exempted,
15 and so long as the same are exempted, from the
16 imposition of taxes by the Constitution or laws of the
17 United States;

18 (2) The measure of taxes shall exempt and exclude all
19 sales of cigarettes [~~and~~], tobacco products, e-liquid
20 cartridges, and units of open system e-liquid to the
21 United States (including any agency or instrumentality



1 thereof that is wholly owned or otherwise so
2 constituted as to be immune from the levy of a tax
3 under this chapter), sold by any person licensed under
4 this chapter; and

5 (3) The taxes shall be paid only once with respect to the
6 same cigarettes [~~or~~], tobacco product[~~er~~], e-liquid
7 cartridge, or unit of open system e-liquid. This
8 limitation shall not prohibit the imposition of the
9 excise tax on receipts from sales of tobacco products
10 under subsection (a) (5); provided that the amount
11 subject to the tax on each sale shall not include
12 amounts previously taxed under this chapter."

13 SECTION 11. Section 245-5, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§245-5 Returns.** Every wholesaler or dealer, on or before
16 the twentieth day of each month, shall file with the department
17 a return showing the cigarettes [~~and~~], tobacco products, e-
18 liquid cartridges, and units of open system e-liquid sold,
19 possessed, or used by the wholesaler or dealer during the
20 preceding calendar month and of the taxes chargeable against the



1 taxpayer in accordance with this chapter. The form of the
2 return shall be prescribed by the department and shall include:

3 (1) A separate statement of the number and wholesale price
4 of cigarettes;

5 (2) The amount of stamps purchased and used;

6 (3) The wholesale price of tobacco products, sold,
7 possessed, or used; [~~and~~]

8 (4) The number of e-liquid cartridges sold, possessed, or
9 used;

10 (5) The wholesale price of all units of open system e-
11 liquid sold, possessed, or used; and

12 [~~4~~] (6) Any other information that the department may
13 deem necessary, for the proper administration of this
14 chapter."

15 SECTION 12. Section 245-8, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) Each wholesaler or dealer shall keep a record of:

18 (1) Every sale or use of cigarettes [~~and~~], tobacco
19 products, e-liquid cartridges, and units of open
20 system e-liquid by the wholesaler or dealer;

21 (2) The number and wholesale price of cigarettes;



- 1 (3) The wholesale price of tobacco products~~[7]~~ sold,
2 possessed, or used;
- 3 (4) The taxes payable on tobacco products sold, possessed,
4 or used, if any; ~~[and]~~
- 5 (5) The number of e-liquid cartridges sold, possessed, or
6 used, if any;
- 7 (6) The taxes payable on e-liquid cartridges sold,
8 possessed, or used, if any;
- 9 (7) The wholesale price of all units of open system e-
10 liquid sold, possessed, or used, if any;
- 11 (8) The taxes payable on all units of open system e-liquid
12 sold, possessed, or used, if any; and
- 13 ~~[+5]~~ (9) The amounts of stamps purchased and used,
14 in a form as the department may prescribe. The records shall be
15 offered for inspection and examination at any time upon demand
16 by the department or the attorney general, and shall be
17 preserved for a period of five years, except that the department
18 and the attorney general, in writing, shall both consent to
19 their destruction within the five-year period or either the
20 department or the attorney general may require that they be kept
21 longer. The department, by rule, may require the wholesaler or



1 dealer to keep other records as it may deem necessary for the
2 proper enforcement of this chapter."

3 SECTION 13. Section 245-9, Hawaii Revised Statutes, is
4 amended by amending subsections (a) and (b) to read as follows:

5 "(a) The department and the attorney general may examine
6 all records, including tax returns and reports under section
7 245-31, required to be kept or filed under this chapter, and
8 books, papers, and records of any person engaged in the business
9 of wholesaling or dealing cigarettes [~~and~~], tobacco products, e-
10 liquid cartridges, and open system e-liquid, to verify the
11 accuracy of the payment of the taxes imposed by this chapter.
12 Every person in possession of any books, papers, and records,
13 and the person's agents and employees, are directed and required
14 to give the department and the attorney general the means,
15 facilities, and opportunities for the examinations.

16 (b) The department and the attorney general may inspect
17 the operations, premises, and storage areas of any entity
18 engaged in the sale of cigarettes, or the contents of a specific
19 vending machine, during regular business hours. This inspection
20 shall include inspection of all statements, books, papers, and
21 records in whatever format, including electronic format,



1 pertaining to the acquisition, possession, transportation, sale,
2 or use of packages of cigarettes [~~and~~], tobacco products other
3 than cigarettes, e-liquid cartridges, and open system e-liquid,
4 to verify the accuracy of the payment of taxes imposed by this
5 chapter, and of the contents of cartons and shipping or storage
6 containers to ascertain that all individual packages of
7 cigarettes have an affixed stamp of proper denomination as
8 required by this chapter. This inspection may also verify that
9 all stamps were produced under the authority of the department.
10 Every entity in possession of any books, papers, and records,
11 and the entity's agents and employees, are directed and required
12 to give the department and the attorney general the means,
13 facilities, and opportunities for the examinations. For
14 purposes of this chapter "entity" means one or more individuals,
15 a company, corporation, a partnership, an association, or any
16 other type of legal entity."

17 SECTION 14. Section 245-17, Hawaii Revised Statutes, is
18 amended by amending subsection (f) to read as follows:

19 "(f) For the purposes of this section[+
20 ~~"Delivery~~], "delivery sale" means any sale of an electronic
21 smoking device to a purchaser in the State where either:



1 (1) The purchaser submits the order for sale by means of a
2 telephonic or other method of voice transmission, the
3 mail or any other delivery service, or the internet or
4 other online service; or

5 (2) The electronic smoking device is delivered by use of
6 the mail or any other delivery service.

7 The foregoing sales of electronic smoking devices shall
8 constitute a delivery sale regardless of whether the seller is
9 located within or without the State.

10 ~~["Electronic smoking device" means any electronic product
11 that can be used to aerosolize and deliver nicotine or other
12 substances to the person inhaling from the device, including but
13 not limited to an electronic cigarette, electronic cigar,
14 electronic cigarillo, or electronic pipe, and any cartridge or
15 other component of the device or related product.]"~~

16 SECTION 15. Section 245-31, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By amending its title to read:

19 **"§245-31 Monthly report on distributions of cigarettes**
20 **[and], tobacco products, e-liquid cartridges, and open system e-**
21 **liquid, and purchases of stamps."**



1 2. By amending subsection (b) to read:

2 "(b) On or before the twentieth day of each month, every
3 licensee shall file on forms prescribed by the department:

4 (1) A report of the licensee's distributions of tobacco
5 products and the wholesale costs of tobacco products
6 during the preceding month; ~~and~~

7 (2) A report of the licensee's distributions of e-liquid
8 cartridges and units of open system e-liquid, and the
9 wholesale costs of e-liquid cartridges and units of
10 open system e-liquid during the preceding month; and

11 ~~(+2)~~ (3) Any other information that the department may
12 require to carry out this part."

13 SECTION 16. Section 245-32, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[~~+~~]~~§~~245-32[~~+~~] **Tax refund or credit for cigarettes ~~and~~,**
16 **tobacco products, e-liquid cartridges, and units of open system**
17 **e-liquid shipped for sale or use outside the State.** (a) The
18 department shall adopt rules to provide a ~~[tobacco]~~ tax refund
19 or credit to a licensee ~~[who]~~ on the tax the licensee has paid
20 ~~[a tobacco tax]~~ pursuant to section 245-3 on the distribution of
21 cigarettes ~~[or]~~, tobacco products, e-liquid cartridges, or units



1 of open system e-liquid that are shipped to a point outside the
2 State for subsequent sale or use outside the State.

3 (b) This part shall not apply to cigarettes [~~or~~], tobacco
4 products, e-liquid cartridges, or units of open system e-liquid
5 that are distributed in this State to consumers and that are
6 subsequently taken outside the State."

7 SECTION 17. This Act does not affect rights and duties
8 that matured, penalties that were incurred, and proceedings that
9 were begun before its effective date.

10 SECTION 18. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 19. This Act shall take effect on July 1, 2060.



Report Title:

Electronic Smoking Devices; E-Liquid; Taxation; Regulation;
Modified Risk Tobacco Products; Retail Tobacco and E-Liquid
Permits

Description:

Imposes a fifty per cent tax on products with a modified risk tobacco product order issued by the Secretary of the United States Department of Health and Human Services. Establishes taxation of e-liquids used in electronic smoking devices. Requires wholesalers and dealers to be licensed. Requires retailers of tobacco and e-liquids to obtain permits. Effective 7/1/2060. (HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

