

ACT 147

A Bill for an Act Relating to the Taxation of Public Utilities, Motor Carriers and Contract Carriers.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. (a) Section 117-20 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by amending subsection (c) to read as follows:

“(c) Public service companies (as that term is defined in section 126-2), with respect to the gross income, either actual gross income or gross income estimated and adjusted, which is included in the measure of the tax imposed by chapter 126.”

(b) The amendments made by this section shall not exclude from taxation under chapter 117, Revised Laws of Hawaii 1955, as amended, any gross income received or accrued, as the case may be, prior to January 1, 1964.

SECTION 2. Chapter 126 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended in the following respects:

(a) By amending the chapter heading to read as follows: “Public Service Company Tax Law”.

(b) By amending section 126-1 to read as follows:

“**Sec. 126-1. Tax levy, in general.** There shall be levied and assessed upon each public service company a tax in the manner provided by this chapter.”

(c) Section 126-2 is amended to read as follows:

“**Sec. 126-2. Definitions.** As used in this chapter unless otherwise required by the context:

(a) ‘Public utility’ has the meaning given that term in section 104-1.

(b) ‘Public service company’ means a public utility, motor carrier, or contract carrier.

(c) ‘Motor carrier’ means a common carrier or contract carrier transporting freight or other property on the public highways, other than a public utility or taxicab.

(d) ‘Contract carrier’ means a person other than a public utility or taxicab which, under contracts or agreements, engages in the trans-

portation of persons or property for compensation, by land, water or air.

(e) 'Carrier' means a person who engages in transportation, and does not include a person such as a freight forwarder who provides transportation by contracting with others, except to the extent that such person himself engages in transportation.

(f) 'Gross income' means the gross income from public service company business as follows:

(1) Gross income from the production, conveyance, transmission, delivery or furnishing of light, power, heat, cold, water, gas or oil; or

(2) Gross income from the transportation of passengers or freight, or the conveyance or transmission of telephone or telegraph messages, or the furnishing of facilities for the transmission of intelligence by electricity, by land or water or air:

(A) Originating and terminating within this State, or

(B) By means of vessels or aircraft having their home port in the State and operating between ports or airports in the State, with respect to the transportation so effected, or

(C) By means of plant or equipment located in the State, between points in the State, or

(3) Gross income from the transportation of freight by motor carriers (other than as stated in paragraph (2) of this subsection), or the conveyance or transmission of messages or intelligence through wires or cables located or partly located in the State (other than as stated in paragraph (2) of this subsection).

(g) The 'net operating income' of a public utility subject to the tax rate imposed by section 126-5(a) is the operating revenues less the operating expenses and tax accruals, including in the computation of such revenues and expenses, debits and credits arising from equipment rents and joint facility rents. In the event that, but for the provisions of this sentence, deductions could not be had for expenses of services because such services were rendered by the same person or persons constituting the public utility or could not be had for income taxes, because such taxes were levied against the person or persons constituting the public utility in his or their individual capacity and not as a separate entity, there nevertheless shall be allowed as deductions in computing the net operating income (1) a reasonable allowance for the value of personal services actually rendered, and (2) such proportion of the actual amount of income taxes, federal and state, as fairly represents the portion of the income so taxed which was derived from the public utility business.

(h) 'Ports', 'airports', or 'points in the State' shall be deemed to be such if they are loading, unloading, transshipment, assembly, transfer or relay points.

(i) 'Home port' means the place where vessels or aircraft have their tax situs or principal tax situs.

(j) 'Public highways' has the meaning defined by section 142-1 including both state and county highways, but operation upon rails shall not be deemed transportation on the public highways."

(d) Section 126-4, as amended, is hereby further amended as follows:

(1) By deleting the words "public utility" wherever the same appear and substituting therefor the words "public service company."

(2) By deleting from the sixth line the words “gross receipts” and substituting therefor the words “gross income.”

(3) By deleting from the last sentence the words “and the real property used in connection therewith.”

(4) By adding to said section a new sentence to read as follows:

“In the case of a public utility subject to the rate of tax imposed by section 126-5(a) or (b), if the public utility carries on lines of business other than its public utility business the real property used in connection with the other lines of business shall be taxed the same as if no public utility business were done.”

(e) Section 126-5 is amended to read as follows:

“Sec. 126-5. Public utilities, generally.

(a) There shall be levied and assessed upon each public utility, except airlines, motor carriers and contract carriers taxed by section 126-5.1, a tax of such rate per cent of its gross income each year from its public utility business as shall be determined in the manner hereinafter provided. The tax imposed by this section is in lieu of all taxes other than those below set out, and is a means of taxing the real property (owned by the public utility or leased to it by a lease under which the public utility is required to pay the taxes upon the property), and the personal property of the public utility, tangible and intangible, including going concern value. In addition to the tax imposed by this chapter there also are imposed income taxes, the specific taxes imposed by chapter 130, the fees prescribed by chapter 104, any tax specifically imposed by the terms of the public utility’s franchise or under chapter 131, the use or consumption tax imposed by chapter 119, and employment taxes.

The rate of the tax upon the gross income of such public utility shall be determined as follows:

If the ratio of the net income of the company to its gross income is fifteen per cent or less, the rate of the tax on gross income shall be five and one-half per cent; for all companies having net income in excess of fifteen per cent of the gross, the rate of the tax on gross income shall increase continuously in proportion to the increase in ratio of net income to gross, at such rate that for each increase of one per cent in the ratio of net income to gross, there shall be an increase of one-fourth of one per cent in the rate of the tax.

The following formula may be used to determine such rate, in which formula the term ‘R’ is the ratio of net income to gross income, and ‘X’ is the required rate of the tax gross income for the utility in question:

$$X = (1.75 + 25R) \%$$

Provided, that in no case governed by the formula shall ‘X’ be less than five and one-half per cent.

However, if the gross income is apportioned under section 126-7.1(b) or (c), there shall be no adjustment of the rate of tax on the amount of gross income so apportioned to the State on account of the ratio of the net income to the gross income being in excess of 15 per cent, and it shall be assumed in such case that the ratio is 15 per cent or less.

(b) Notwithstanding subsection (a), the rate of the tax upon the portion of the gross income of a carrier of passengers by land which consists in passenger fares for transportation between points on a

scheduled route, shall be five per cent. However, if such carrier has other public utility gross income the fares nevertheless shall be included in applying subsection (a) in determining the rate of tax upon the other public utility gross income.”

(f) By adding a new section 126-5.1 to read as follows:

“Sec. 126-5.1. Airlines, certain carriers. There shall be levied and assessed upon each airline, each motor carrier, and each contract carrier other than a motor carrier, a tax of 3½ per cent of its gross income each year from such airline, motor carrier or contract carrier business. The tax imposed by this section is a means of taxing the personal property of the airline or other carrier, tangible and intangible, including going concern value, and is in lieu of the tax imposed by chapter 117 but is not in lieu of any other tax.”

(g) Section 126-6, as amended by Act 277 of the Session Laws of Hawaii 1959, is further amended by deleting the words “public utility” wherever the same appear and substituting therefor the words “public service company”.

(h) Section 126-7 is hereby deleted.

(i) There is hereby added a new section 126-7.1 to read as follows:

“Sec. 126-7.1. Allocation and apportionment.

(a) The gross income included in the measure of the tax under section 126-2(f)(2) or (3) shall be determined by an allocation and separate accounting so far as practicable.

(b) If under section 126-2(f)(2) an apportionment of gross income is necessary, there shall be apportioned to the State and included in the measure of the tax that proportion of the total gross income, so requiring apportionment, which the direct cost of the transportation, conveyance or transmission designated in section 126-2(f)(2) bears to the total direct cost of the transportation, conveyance or transmission the gross income from which requires apportionment.

(c) If under section 126-2(f)(3) an apportionment of gross income is necessary, there shall be apportioned to the State and included in the measure of the tax that proportion of the total gross income, so requiring apportionment, which the total direct cost of the transportation, conveyance, or transmission within the State bears to the total direct cost of the transportation, conveyance or transmission the gross income from which requires apportionment.

(j) By adding a new section 126-7.5 to read as follows:

“Sec. 126-7.5. Time of application of tax and other provisions.

(a) In general. The tax imposed by this chapter applies to every public service company:

(1) which is in business at the commencement of a calendar year, as of January 1 of that year;

(2) which begins business after the commencement of a calendar year, as of the commencement of business.

(b) Third year of doing business; earlier years, how governed. If the company is in business at the commencement of the calendar year, and was in business during the whole of the preceding year and prior thereto, the tax shall be returned and paid as provided in sections 126-4 and 126-6.

However, if paragraph (2) of subsection (a) applies, or if the com-

pany though in business at the commencement of the calendar year was not in business during the preceding calendar year, or was in business during the preceding calendar year or a part thereof but not prior thereto, the tax shall be returned and paid as provided in subsections (c) and (d).

(c) First year of doing business. The measure of the tax for the year in which the company begins business is an estimate of the gross income of the public service company for that year or for the part of that year in which it is in business.

The tax thereon for the year in which the company begins business shall be at the following rate: (1) If paragraph (2) of subsection (a) applies, at the rate of three and one-half per cent, or (2) if paragraph (1) of subsection (a) applies but the company though in business at the commencement of the calendar year, was not in business during any part of the preceding calendar year, the tax shall be at the rate provided by sections 126-5 and 126-5.1, except that there shall be no adjustment of the rate of tax on account of the ratio of the net income to the gross income being in excess of fifteen per cent and it shall be assumed for purposes of this subsection and subsection (e) that the ratio is fifteen per cent or less.

The estimate shall be made and the tax returned on or before the twentieth day of the third month after the month in which the company begins business and shall be subject to redetermination by the director of taxation and adjustment as provided in subsection (e). Payment of the tax shall accompany the return unless time for payment is extended by the director of taxation; such extension may be granted by the director in order to provide for payment of the tax in installments during the remainder of the calendar year.

(d) Second year of doing business. The measure of the tax for the year following the year in which the company began business is an estimate of the average gross income for a calendar year, subject to redetermination and adjustment as provided in subsection (e). Such estimate shall be made and the tax returned and paid at the times provided for other companies which are in business at the commencement of the calendar year.

The tax thereon shall be at the rate provided by sections 126-5 and 126-5.1, except that there shall be no adjustment of the rate of tax on account of the ratio of the net income to the gross income being in excess of fifteen per cent and it shall be assumed for purposes of this subsection and subsection (e) that the ratio is fifteen per cent or less.

(e) Adjustment of estimates. Every estimate made under subsections (c) and (d) shall be subject to redetermination by the director after the close of the year for which the estimate is made, and the final amount of tax shall be based upon the estimated gross income as adjusted under this subsection.

If the year for which the estimate is made is the year in which the company commenced doing business and subsection (c) applies, any variance between the estimate and the actual gross income for that year shall be adjusted by the director and a credit or refund made, or assessment issued, dependent upon whether the estimate was in excess of or less than the actual gross income of the company for that year.

If the year for which the estimate is made is the year following the year in which the company commenced doing business and subsection (d) applies, the average monthly gross income during the period from and after the commencement of business to the close of the year for which the estimate was made shall be determined and multiplied by twelve. The amount so computed shall be compared with the estimate and an adjustment made so as to allow a credit or refund if and to the extent that the estimate was in excess of this amount, or issue an assessment if and to the extent that the estimate was less than this amount.

(f) Acquisition of business of another company. Whenever any public service company subject for any year to the tax imposed by this chapter, shall have acquired by purchase or otherwise during the preceding year the business or any part thereof of another public service company liable to tax under this chapter for such preceding year but not liable for the year following such sale or disposition, and such acquiring company continues the operation of such business so acquired, the gross income to be reported by the acquiring company for the purpose of determining the amount of its tax under this chapter for the year following the year in which such business was so acquired shall include, in addition to the gross income of the acquiring company during the year ending December thirty-first preceding, the gross income of the business or part thereof so acquired for such portion of such preceding year as such business was not operated by the acquiring company.

The provisions of this subsection shall not apply to any company whose tax for the year involved is measured under subsection (c) by an estimate of gross income for such year subject to adjustment after the close of the year.

If the first paragraph of this subsection applies but the tax of the acquiring company for the year is governed by subsection (d) and adjusted under subsection (e), then in determining the average monthly gross income for that purpose there shall be included, in addition to the gross income of the acquiring company for the period involved in the determination of the average, the gross income of the business or part thereof acquired by the company for the portion of that period in which the business was not operated by the acquiring company.

(g) Consolidation or merger. Whenever there is a consolidation or merger of public service companies, liability to the tax imposed by this chapter shall attach to the company thus formed and the gross income which shall be used for measuring the tax of the company thus formed shall include the gross income of the companies which were consolidated or merged."

SECTION 3. Section 129-9 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended:

(a) By amending the first clause of the section, to and including the words "as follows", to read as follows:

"Each county shall receive a share of the general excise tax, consumption tax, compensating tax, and public service company tax (in this chapter called the county's share of the general excise tax), as follows:"

(b) By deleting from the third paragraph, first sentence, the lan-

guage "excepting only general excise taxes collected from public utility airlines" which appears at the end of the sentence, and by substituting therefor the following words: "excepting only taxes collected from public utilities as defined in section 104-1."

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provisions to other persons or circumstances shall not be affected thereby.

SECTION 5. This Act, upon its approval, shall take effect as of January 1, 1964. Any public service company which during the calendar year 1963 or any part thereof was subject to the general excise tax imposed by chapter 117 shall be taxed in 1964 the same as if subsections (d) and (e) of section 126-7.5 were applicable, and the tax shall be adjusted so as to apply to an amount of gross income computed at twelve times the average monthly gross income received or derived during the calendar years 1963 and 1964; provided, that at the option of the company the tax shall be measured by the gross income of the calendar year 1963.

(Approved June 3, 1963.) **H.B. 57.**
