

ACT 48

A Bill for an Act Relating to Taxation: Providing for Taxation of Users or Occupants of Exempt Real Property.

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

SECTION 1. Section 128-22 of the Revised Laws of Hawaii 1955 is hereby amended by deleting the words: "provided, that real property belonging to the United States shall be taxed if and when the Congress of the United States so permits," which begin in the second and end with the fifth line of subsection (a), and inserting in lieu thereof the following:

"provided, that real property belonging to the United States shall be taxed upon the use or occupancy thereof as provided in section 128-22.1, and there shall be a tax upon the property itself if and when the Congress of the United States so permits,"

SECTION 2. Chapter 128 of the Revised Laws of Hawaii 1955 is hereby amended by adding thereto a new section to be numbered section 128-22.1 and to read as follows:

"Sec. 128-22.1. Lessees of exempt real property.

(a) When any real property which for any reason is exempt from taxation is leased to and used or occupied by a private person in connection with any business conducted for profit, such use or occupancy

shall be assessed and taxed in the same amount and to the same extent as though the lessee were the owner of such property and as provided in subsection (b), provided, that:

(1) The foregoing shall not apply to the following:

(A) Federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed;

(B) Any property or portion thereof taxed under any other provision of chapter 128 to the extent and for the period so taxed.

(2) The term 'lease' shall mean any lease for a term of one year or more, or which is renewable for such period as to constitute a total term of one year or more. A lease having a stated term shall, if it otherwise comes within the meaning of the term 'lease', be deemed a lease notwithstanding any right of revocation, cancellation or termination reserved therein or provided for thereby. In any case of occupancy of a building or structure by two or more tenants, or by the government and a tenant, the tenancy shall not be deemed a lease, irrespective of the term thereof.

(3) The assessment of the use or occupancy shall be made in accordance with the highest and best use permitted under the terms and conditions of the lease.

(b) The tax shall be assessed to and collected from such lessee as nearly as possible in the same manner and time as the tax assessed to owners of real property, except that such tax shall not become a lien against the property. In case the use or occupancy is in effect on January 1 of any tax year, the lessee shall be assessed for the entire year but adjustments of the tax so assessed shall be made in the event of the termination of the use or occupancy during the year so that the lessee is required to pay only so much of the tax as is proportionate to the portion of the tax year during which the use or occupancy is in effect, and the tax assessor and tax collector of the division in which the property is situated are hereby authorized to remit the tax due for the balance of the tax year. In case the use or occupancy commences after January 1 of any tax year, the lessee shall be assessed for only so much of the tax as is proportionate to the period that the use or occupancy bears to the tax year.

The assessment of the use or occupancy of real property made under this section shall not be included in the aggregate value of taxable realty for the purposes of section 129-2 but each board of supervisors, at the time that it is furnished with information as to the value of taxable real property, shall also be furnished with information as to the assessments made under this section, similarly determined but separately stated.

If a use or occupancy is in effect on January 1 of any tax year, the assessment shall be made and listed for that year and the notice of assessment shall be given to the taxpayer in the manner and at the time prescribed in section 128-27, and when so given, the taxpayer, if he deems himself aggrieved, may appeal as provided in section 128-30; if a use or occupancy commences after January 1 of any tax year or if for any reason an assessment is omitted for any tax year, the assessment shall be made and listed and notice thereof shall be given in the

manner and at the time prescribed in section 128-27, and an appeal from an assessment so made may be taken as provided in section 128-34.”

SECTION 3. This Act shall take effect January 1, 1964.

(Approved May 18, 1963.) **H.B. 59.**
