

ACT 92

H.B. NO. 2438-82

A Bill for an Act Relating to the Encouragement of Federally Certified Development Companies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to encourage the formation and successful operation within the State of development companies as defined by Title V of the federal Small Business Investment Act of 1958, as amended. The purpose of the Small Business Investment Act is to improve and stimulate the national economy in general and the small business segment thereof in particular by establishing a program to stimulate and supplement the flow of long-term loan funds which small business concerns need for the sound financing of their growth, expansion, and modernization and which are not available in adequate supply. The legislature intends this Act to benefit the economy of the State by furthering the growth of small business concerns and thereby providing increased employment opportunities.

SECTION 2. Section 478-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Small business investment companies and development companies shall

be exempt from this chapter. The maximum rate of interest charged by such small business investment companies and development companies on any loan shall be the maximum rate of interest permitted, without reference to state law, by the federal Small Business Administration pursuant to the Small Business Investment Act of 1958, as amended.

As used in this subsection "small business investment company" and "development company" [means] mean a company approved by the federal Small Business Administration to operate under the provisions of the federal Small Business Investment Act of 1958 [(72 U.S. Statutes at Large 689 et seq.; 15 U.S.C. 661 et seq.), as amended, and issued a license as provided thereunder.], Public Law 699, as amended.

SECTION 3. Chapter 241, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to section 241-1 to be appropriately inserted and to read as follows:

"Development company" means a company approved by the federal Small Business Administration to operate under the provisions of Title V of the federal Small Business Investment Act of 1958, Public Law 699, as amended."

2. Section 241-3 is amended to read as follows:

**"§241-3 Imposition of tax on other banks, building and loan associations, industrial loan companies, financial corporations, [and] small business investment companies[.], and development companies.** Every bank, other than a national banking association, [and] every building and loan association, every industrial loan company, financial corporation, [and] small business investment company, and development company, located or doing business in the State, shall annually, as of January 1, pay a franchise tax measured as, and at the rate, provided in section 241-4."

SECTION 4. Section 235-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as provided in sections 235-61 to 235-67 relating to withholding and collection of tax at source, and section 235-2.3(g) relating to "unrelated business taxable income", the following persons and organizations shall not be taxable under this chapter:

- (1) Banks, building and loan associations, industrial loan companies, [and] small business investment companies, and development companies taxable under chapter 241; and insurance companies and agricultural cooperative associations, exclusively taxable under other laws;
- (2) Corporations, companies, associations, or trusts conducted solely for charitable, religious, educational, prepaid legal services, or scientific purposes within the State, including fraternal beneficiary societies;
- (3) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries, no part of the net earnings of which inures to the financial benefit of any private shareholder or individual;
- (4) Business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual;
- (5) Civic leagues or organizations, not organized for profit but operated

exclusively for the promotion of social welfare, which shall include the operation of a prepaid legal service plan, or local associations of employees, the membership of which is limited to the employees of a designated person or persons, and the net earnings of which are devoted exclusively to charitable, educational, prepaid legal service, or recreational purposes within the State;

- (6) Labor organizations;
- (7) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any private shareholder;
- (8) A trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries, and which meets the requirements of the Internal Revenue Code for exemption for the tax thereby imposed."

SECTION 5. Section 237-23, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not apply to the following persons:

- (1) Banks taxable under chapter 241;
- (2) Public service companies (as that term is defined in section 239-2), 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 239;
- (3) Public utilities owned and operated by the State or any county or other political subdivision thereof;
- (4) Insurance companies which pay the State a tax upon their gross premiums under chapter 431;
- (5) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services, or other benefits to the members of such societies, orders, or associations, and to their dependents;
- (6) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended by the Housing Act of 1961, the Senior Citizens Housing Act of 1962, the Housing Act of 1964, and the Housing and Urban Development Act of 1965 as well as that of operating a prepaid legal services plan;
- (7) Business leagues, chambers of commerce, boards of trade, civic leagues, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare which shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;
- (8) Hospitals, infirmaries, and sanatoria;

- (9) Cooperative associations now or hereafter incorporated under and pursuant to chapter 421 or 422 and which fully meet the requirements of section 421-23 or section 422-33 (provided that the exemption shall apply only to the gross income derived from its activities authorized by chapter 421 or 422; and that the exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all such persons shall be so taxable);
- (10) Building and loan associations taxable under chapter 241;
- (11) Persons affected with [leprosy] Hansen's disease and kokuas, with respect to business within the county of Kalawao;
- (12) Corporations, companies, associations, or [trust] trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual (provided that the exemption shall apply only to the activities of such persons in the conduct of cemeteries and not to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of such persons);
- (13) Industrial loan companies taxable under chapter 241[.]; provided that the exemption shall apply only to the income from the "engaging in the business of an industrial loan company" as defined in section 408-2;
- (14) Businesses which are organized for the purpose of broadcasting radio programs to areas outside of the State to promote the Hawaiian tourist industry and which are solely supported by state funds;
- (15) [Local development companies incorporated under the laws of the State and approved by the Small Business Administration as qualifying for loans under section 502 of the Small Business Investment Act of 1958, as amended, provided that the exemption shall apply only with respect to gross income derived as interest on loans made to borrowers from loan funds obtained from the Small Business Administration but only if the loans are made at the same rates of interest payable to the Small Business Administration by the local development corporation;] Development companies taxable under chapter 241; provided that the exemption shall apply only to gross income derived as interest on loans made to borrowers as provided by Title V of the federal Small Business Investment Act of 1958, Public Law 699, as amended;
- (16) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations;
- (17) Small business investment companies taxable under chapter 241; provided that the exemption shall apply only to the income derived from activities engaged in as provided by the federal Small Business Investment Act of 1958, Public Law 699, as amended[.]; provided further that the exemption shall not apply to consulting and advisory services engaged in under the first sentence of section 308(b) or Public

Law 699.”

SECTION 6. Section 210-7, Hawaii Revised Statutes, is amended to read as follows:

“§210-7 Loans to [local] development [corporations.] companies. The department of planning and economic development may make loans to [local] development [corporations] companies incorporated in the State of Hawaii for the purpose of supplementing the funds required to be forthcoming [from the local development corporations] to qualify [them to receive a loan under section 502] development companies to receive financial assistance under Title V of SBIA. The loans shall be[:

- (1) Of the amount determined by the department to be necessary and proper, subject however to a maximum of twenty per cent of the total cost of any single project;
- (2) At the rate of interest determined by the department to be necessary and proper but not less than that fixed by SBA in its loan; and
- (3) Subject] subject to terms and conditions established by the department as similar a possible to applicable terms and conditions prescribed by rules and regulations promulgated by SBA.”

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 15, 1982.)