

ACT 53

S.B. NO. 1757-84

A Bill for an Act Relating to Taxation.

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

SECTION 1. The legislature finds that during the summer of 1983 there has been much discussion nationally and in Hawaii concerning the use of the worldwide unitary method of taxing multinational companies. This method allocates and apportions income, costs, expenses, and property between Hawaii and other taxing jurisdictions, including foreign countries. The principle was

upheld in Container Corporation of America v. The Franchise Tax Board, ____ U.S. ____, 51 Law Week 4987 (1983), as it was imposed by the State of California. Many foreign countries have objected to this methodology of taxation and certain multinational corporations that now do a large amount of business in states which use this method are considering relocating or not locating in those states. Due to gains or losses in other countries, during good times such a method might mean more tax money to a state while during bad economic times it might mean less tax moneys to the state. In any case, the use of such method does not create a desirable taxing climate for multinational corporations.

The legislature finds that the direction of Hawaii during the decade of the eighties is towards encouraging foreign investment and activity in Hawaii and the activity of Hawaii firms in international markets. This may be gathered by statements in the media and in particular has been set forth in the Hawaii State Planning Act, as for example:

- (1) General objectives and policies for the economy in general include the expansion of Hawaii's national and international marketing, communications, and organizational ties and the promotion of Hawaii as an attractive market for investment activities that benefit Hawaii's people.
- (2) Potential growth activities include the expansion of Hawaii's capacity to attract and service international programs and activities that generate employment for Hawaii's people and the enhancement of Hawaii's role as a center for international trade, finance, services, technology, education, culture, and the arts.
- (3) Economic implementing actions include lessening the financial burden on businesses and promoting Hawaii as an attractive market for investment activities that benefit Hawaii's people.

In order to go forward in this direction an attractive tax climate must exist and it must be set forth in a concrete manner, not based on whim or policy.

The legislature finds that Hawaii has the power to use the worldwide unitary method of taxation, although Hawaii has not used it to date. Statements by the administration indicate that there are no plans to tax the income earned worldwide by multinational corporations. Multinational corporations, however, will not look to statements by the administration concerning intention, when such intention may change during good economic times or may change with administrations; they will look to the law.

The purpose of this Act is to indicate the intent of the legislature that Hawaii does not intend to use the worldwide unitary method of taxing income.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§235- Application. It is the intent of the legislature that in administering this chapter, this part, and sections 235-4 and 235-5 or as a member of or administering the multistate tax compact under chapter 255 the department of taxation shall not use or allow the use of the worldwide method of unitary taxation upheld in Container Corporation of America v. The Franchise Tax Board, U.S. [51 Law week 4987] (1983). It is the intent of the legislature that the department of taxation shall continue to apply this chapter, part, sections 235-4 and 235-5, and chapter 255 as they were applied before the above case was decided.”

SECTION 3. In printing this Act, the revisor of statutes shall insert the appropriate citation of the United States Report for the Container Corporation of America v. The Franchise Tax Board case and delete the Law Week citation.

SECTION 4. Material to be deleted is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 18, 1984.)