

ACT 16

S.B. NO. 479

A Bill for an Act Relating to Administration of Taxation.

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

SECTION 1. Section 212-8, Hawaii Revised Statutes, is amended to read as follows:

“§212-8 Exemption from taxes. Notwithstanding any law to the contrary, sales of all products which are categorized as privileged foreign merchandise, privileged domestic merchandise, nonprivileged foreign merchandise, nonprivileged domestic merchandise, or zone-restricted merchandise, and which are admitted into a foreign trade zone, as more specifically set forth in the Act of Congress, and any rules and regulations promulgated thereunder, made directly to any common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state by the crew or passengers on the shipper’s vessels or airplanes, or for use out-of-state by the vessels or airplanes, shall be exempt from those taxes imposed under chapters 237, 238, 243, [244,] 244D, and 245.”

SECTION 2. Section 231-3, Hawaii Revised Statutes, is amended to read as follows:

“§231-3 Department, general duties and powers. The department of taxation shall have the following duties and powers, in addition to any others prescribed or granted by this chapter:

- (1) **Assessment:** To assess, pursuant to law, all real property for taxation and to make any other assessment by law required to be made by the department;
- (2) **Collections:** To be responsible for the collection of all taxes imposed by chapters 231 to 249 [and], 236D, and 244D except those which by law are to be collected by county treasurers, and for such other duties as are provided by law;
- (3) **Construction of revenue laws:** To construe the tax and revenue laws, the administration of which is within the scope of the

department's duties, whenever requested by any officer acting under such laws, or by an interested person;

- (4) **Enforcement of penalties:** To see that penalties are enforced when prescribed by any tax or revenue law of the State (the administration of which is within the scope of the department's duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any such law; in the execution of these powers and duties the department may call upon the attorney general or any of his deputies, including the county attorneys or public prosecutors, whose duties it shall be to assist in the institution and conduct of all proceedings or prosecutions for penalties and forfeitures, liabilities, and punishments for violation of the laws in respect to the assessment and taxation of property;
- (5) **Forms:** To prescribe forms to be used in or in connection with such assessment, including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the assessment, and to change the same from time to time as deemed necessary;
- (6) **Inspection, examination of records:** To inspect and examine the records of all public officers without charge, and to examine the books and papers of account of any person for the purpose of enabling the department to obtain all information that could in any manner aid the department in discharging its duties under any tax law;
- (7) **Recommendations for legislation:** To recommend to the governor such amendments, changes, or modifications of the laws as may seem proper or necessary to remedy injustice or irregularity in taxation or to facilitate the assessment of property for taxation or any other assessment of or for taxes;
- (8) **Report to governor:** To report to the governor annually, and at such other times and in such manner as the governor may require, concerning the acts and doings and the administration of the department, and such other matters of information concerning taxation as may be deemed of general interest;
- (9) **Rules and regulations:** To make such rules and regulations as the department may deem proper effectually to carry out the purposes for which the department is constituted and to regulate matters of procedure by or before the department;
- (10) **Compromises:** With the approval of the governor, to compromise any claim arising under any tax law the administration of which is within the scope of the department's duties; and in any such case there shall be placed on file in the department's office a statement of (A) the amount of tax assessed, or proposed to be assessed, (B) the amount of penalties and interest imposed or which could have been imposed by law with respect to the preceding item, as computed by the department, (C) the total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof, and (D) the reasons for the compromise;
- (11) **Retroactivity of rulings:** To prescribe the extent, if any, to which any ruling, regulation, or construction of the tax laws, of general application, shall be applied without retroactive effect;

- (12) Remission of delinquency penalties and interest: Except in cases of fraud or wilful violation of the laws or wilful refusal to make a return setting forth the information required by law (but inclusion in a return of a claim of nonliability for the tax shall not be deemed a refusal to make a return), the department may remit any amount of penalties or interest added, under any law administered by the department, to any tax that is delinquent for not more than ninety days, in a case of excusable failure to file a return or pay a tax within the time required by law, or in a case of uncollectibility of the whole amount due; and in any such case there shall be placed on file in the department's office a statement showing the name of the person receiving such remission, the principal amount of the tax, and the year or period involved;
- (13) Closing agreements: To enter into an agreement in writing with any taxpayer or other person relating to the liability of such taxpayer or other person, under any law the administration of which is within the scope of the department's duties, in respect of any taxable period, or in respect of one or more separate items affecting the liability for any taxable period; such agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the department, shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, (A) the matters agreed upon shall not be reopened, and the agreement shall not be modified, by any officer or employee of the State, and (B) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded;
- (14) Other powers and duties: In addition to the powers and duties contained in this chapter, the powers and duties contained in chapter 246 for levying, assessing, collecting, receiving, and enforcing payments of the tax imposed thereunder, and otherwise relating thereto, shall be severally and respectively conferred, granted, practiced, and exercised for levying, assessing, collecting, and receiving and enforcing payment of the taxes imposed under the authority of chapters 235, 237 to 239, 243 to 245, [and] 236D, and 244D, as far as the provisions of chapter 246 are not superseded by and are consistent with the express provisions of those chapters, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated in those chapters, with reference to those taxes, and all of the provisions and regulations prescribed under chapter 246, except as aforesaid, shall be applied, construed, deemed, and taken to refer to the taxes imposed under the authority of those chapters, in like manner."

SECTION 3. Section 231-6, Hawaii Revised Statutes, is amended to read as follows:

"§231-6 Oaths, power to administer. The department of taxation may administer all oaths or affirmations required to be taken or be administered under chapters 231 to 249 [and], 236D, and 244D, with respect to any matters coming within the scope of the duties of the department."

SECTION 4. Section 231-12, Hawaii Revised Statutes, is amended to read as follows:

“§231-12 District judges; jurisdiction over misdemeanors and actions for tax collections. Except as otherwise specifically provided by chapters 231 to 249 [and], 236D, and 244D, the several district judges shall have jurisdiction to try misdemeanors arising under such chapters and all complaints for the violation of such chapters and to impose any of the penalties therein prescribed, and shall also have jurisdiction to hear and determine all civil actions and proceedings for the collection and enforcement of collection and payment of all taxes assessed thereunder, and all actions or judgments obtained in tax actions and proceedings, notwithstanding the amount claimed.”

SECTION 5. Section 231-23, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) This subsection shall apply to all taxes.

- (1) All refunds shall be paid only upon a form to be known as a “refund voucher” prepared by the collector. The refund vouchers shall set forth all the details of each transaction, shall be approved by the director, and shall be forwarded to the comptroller from time to time. The comptroller shall issue his warrant, in the form prescribed by section 40-52, for the payment of any such refund out of the tax reserve fund hereinafter created; provided that if the person entitled to the refund is delinquent in the payment of any tax, the comptroller, upon demand of the collector and after notice to the delinquent taxpayer, shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the refund and pay the same to the collector.
- (2) There is hereby appropriated, from the general revenues of the State not otherwise appropriated, the sum of \$25,000 which shall be set aside as a special fund to be known as the tax reserve fund. All refunds of taxes collected under chapters 235 to 239, 241, 243 to 246, [and], 236D, and 244D, heretofore made out of the reserve funds in chapters 235 and 237 or from the general fund shall be made out of the tax reserve fund. The director of taxation may, from time to time, deposit taxes collected by him under the chapters enumerated in the immediately preceding sentence in the state treasury to the credit of the tax reserve fund so that there may be maintained at all times a fund not exceeding \$25,000. The amounts deposited shall be made from the taxes with respect to which a particular refund is made, but in the case of a real property tax refund, from the next collection of real property taxes of the taxation division in which the property which was the subject of the refund is situated.”

SECTION 6. Section 231-29, Hawaii Revised Statutes, is amended to read as follows:

“§231-29 Joinder of party defendant when State claims tax liens. The director of taxation (or in the case of a lien under chapter 383, the director of labor and industrial relations) may be named a party defendant in any civil action in any state court of competent jurisdiction or in the district court of the United States for the district of Hawaii, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the State has or claims a tax lien under chapters 233, 235, 237 to 239, 241, 243 [to], 244D, 245, and 383; provided[,] that the jurisdiction herein conferred shall be limited and shall not operate as a consent by the State to be sued as to its claim of title to

or liens and encumbrances on real and personal property other than the liens aforementioned.

Service upon the director shall be made as provided by the rules of court. In any action herein contemplated, the director may ask, by way of affirmative relief, for the foreclosure of the aforementioned state tax liens, but in the absence of such request for affirmative relief, upon any foreclosure sale the property shall be sold subject to the tax liens. Nothing in this section shall preclude the director from asking for such other and further relief as might have been claimed by intervention in the action."

SECTION 7. Section 237-24, Hawaii Revised Statutes, is amended to read as follows:

"§237-24 Amounts not taxable. This chapter shall not apply to the following amounts:

- (1) Amounts received under life insurance policies and contracts paid by reason of the death of the insured;
- (2) Amounts received (other than amounts paid by reason of death of the insured) under life insurance, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract;
- (3) Amounts received under any accident insurance or health insurance policy or contract or under workers' compensation acts or employers' liability acts, as compensation for personal injuries, death, or sickness, including also the amount of any damages or other compensation received, whether as a result of action or by private agreement between the parties on account of the personal injuries, death, or sickness;
- (4) The value of all property of every kind and sort acquired by gift, bequest, or devise, and the value of all property acquired by descent or inheritance;
- (5) Amounts received by any person as compensatory damages for any tort injury to him, or to his character reputation, or received as compensatory damages for any tort injury to or destruction of property, whether as the result of action or by private agreement between the parties (provided that amounts received as punitive damages for tort injury or breach of contract injury shall be included in gross income);
- (6) Amounts received as salaries or wages for services rendered by an employee to an employer;
- (7) Amounts received as alimony and other similar payments and settlements;
- (8) Amounts collected by distributors as fuel taxes on "liquid fuel" imposed by chapter 243, and the amounts collected by such distributors as a fuel tax imposed by any act of the Congress of the United States;
- (9) Taxes on liquor imposed by chapter [244] 244D on dealers holding permits under that chapter;
- (10) The amounts of taxes on tobacco products imposed by chapter 245 on wholesalers or dealers holding licenses under that chapter and selling the products at wholesale, and the amounts of taxes on tobacco products collected from a wholesaler by another where the wholesaler makes separate charges for the amounts so collected

- from him and collects the same from those purchasing from him as provided by chapter 245;
- (11) Federal excise taxes imposed on articles sold at retail and collected from the purchasers thereof and paid to the federal government by the retailer;
 - (12) The amounts of federal taxes under chapter 37 of the Internal Revenue Code, or similar federal taxes, imposed on sugar manufactured in the State, paid by the manufacturer to the federal government;
 - (13) An amount up to, but not in excess of, \$2,000 a year of gross income received by any blind, deaf, or totally disabled person engaging, or continuing, in any business, trade, activity, occupation, or calling within the State;
 - (14) Amounts received by an organization enumerated under section 237-23(a)(5) to (8) from the sale of brooms which are manufactured by blind persons working at the adult blind broom shop;
 - (15) Amounts received by a producer of sugarcane from the manufacturer to whom he sells the sugarcane, where (A) the producer is an independent cane farmer, so classed by the secretary of agriculture under the Sugar Act of 1948 (61 Stat. 922, Chapter 519) as the Act may be amended or supplemented, and (B) the value of the sugar, and other products manufactured from the sugarcane, is included in the measure of the tax levied on the manufacturer under section 237-13(1), and (C) the producer's gross proceeds of sales are dependent upon the actual value of the products manufactured therefrom or the average value of all similar products manufactured by the manufacturer, and (D) the producer's gross proceeds of sales are reduced by reason of the tax on the value of the manufactured products;
 - (16) Money paid by the State or eleemosynary child-placing organizations to foster parents for their care of children in foster homes;
 - (17) Amounts received by a cooperative housing corporation from its shareholders in reimbursement of funds paid by such corporation for lease rental, real property taxes, and other expenses of operating and maintaining the cooperative land and improvements, provided that such a cooperative corporation is a corporation:
 - (A) Having one and only one class of stock outstanding;
 - (B) Each of the stockholders of which is entitled solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building owned or leased by the corporation;
 - (C) No stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation;
 - (18) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms "agricultural commodity", "producer", and "produce dealer" shall be defined in the same manner as they are defined in section 147-1;
 - (19) Amounts received from sales of (A) intoxicating liquor as defined in chapter [244,] 244D, (B) tobacco products as defined in chapter

- 245, and (C) agricultural, meat, or fish products grown, raised, or caught in Hawaii, when such sales are made to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state by such person, crew, or passengers on such shipper's vessels or airplanes;
- (20) Amounts received by the manager or board of directors of an association of apartment owners of a horizontal property regime established in accordance with chapter 514A in reimbursement of sums paid for common expenses;
 - (21) Any provision of law to the contrary notwithstanding, exemptions or exclusions from tax under this chapter allowed on or before April 1, 1978 for amounts received by any person or common carrier engaged in interstate or foreign commerce, or both, whether ocean-going or air, shall continue undiminished and be available thereafter to the extent and under the conditions such exemptions or exclusions have theretofore been previously allowed in the State under the provisions of the Constitution of the United States or an act of the Congress of the United States.

SECTION 8. Section 237-25, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any provision of law to the contrary notwithstanding, there shall be exempted from, and excluded from the measures of, the taxes imposed by chapters 237, [244,] 244D, and 245 all sales, and the gross proceeds of all sales, of:

- (1) Intoxicating liquor, as defined in chapter 281, hereafter sold by any person licensed under chapter 281 to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or chapter [244] 244D but not including national banks), or to any organization to which such sale is permitted by the proviso of “Class 3” of section 281-31, located on any army, navy, or air force reservation, but the person making the sale shall nevertheless, within the meaning of chapters 237, [244,] 244D, and 281 be deemed to be a licensed seller.
- (2) Tobacco products, as defined in chapter 245, sold by any person licensed under the chapter to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or chapter 245 but not including national banks), but the person making the sale shall nevertheless, within the meaning of chapters 237 and 245, be deemed to be a licensed seller.
- (3) Other tangible personal property hereafter sold by any person licensed under this chapter to the United States (including any agency or instrumentality thereof but not including national banks), but the person making such sale shall nevertheless, within the meaning of this chapter, be deemed a licensed seller.
- (4) When the amount of property sold by a licensee turns upon the amount of the property sold through a vending machine or similar device to the customer using the device, there shall not be deemed to have occurred any sale covered by an exemption under [paragraphs] paragraph (1), (2), or (3) [of this subsection].”

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SECTION 9. Section 238-3, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The tax imposed by this chapter shall not apply to any intoxicating liquor as defined in chapter [244] 244D and tobacco products as defined in chapter 245, imported into the State and sold to any person or common carrier in interstate commerce, whether ocean-going or air, for consumption out-of-state by such person, crew, or passengers on the shipper’s vessels or airplanes.”

SECTION 10. Section 281-33.1, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In the case of a shipment of wine or beer which is otherwise available in the State, the permit shall not be issued unless the applicant shall pay a fee equal to the tax that would be imposed by section [244-4] 244D-4 upon the use of liquor having a wholesale price equal to the price paid or to be paid by applicant for the wine or beer being shipped, and such fee shall be in lieu of the imposition by section [244-4] 244D-4 of any tax upon the use of such wine or beer.”

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval.

(Approved April 13, 1985.)