

**ACT 69**

S.B. NO. 2832

A Bill for an Act Relating to Taxation of Banks and Financial Corporations.

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

SECTION 1. Chapter 241, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§241- Time of application of tax and other provisions. (a) The tax**

imposed by this chapter applies to every bank, building and loan association, development company, financial corporation, industrial loan company, or small business investment company as defined in section 241-1:

- (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) The measure of the tax for the year in which the taxpayer begins business is an estimate of the net income of the taxpayer for that year or for the part of that year in which it is in business.

The tax for the year in which the taxpayer begins business shall be at the tax rate provided in section 241-4.

The estimate shall be made on forms provided by the department and shall be subject to adjustment by the filing of an amended return as provided in subsection (e). The tax shall be paid on or before the twentieth day of the third month after the month in which the taxpayer begins business. Payment of the tax shall accompany the return unless time for the payment is extended by the director of taxation. The 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.

(c) The measure of the tax for the year following the year in which the taxpayer began business is an estimate, utilizing the average monthly net income of the first taxable year of doing business multiplied by twelve. The tax shall be at the rate provided by section 241-4. A return shall be made and the tax returned and paid on or before the twentieth day of the fourth month following the close of the first taxable year of doing business and shall be subject to adjustment by the filing of an amended return as provided in subsection (e).

(d) If the taxpayer 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 section 241-4.

(e) An amended return shall be filed after the close of the applicable taxable year for each year for which an estimated tax return was filed under subsection (b) or (c).

If subsection (b) or (c) applies, any variance between the estimate and the actual net income for that year shall be adjusted and a credit or refund made, or payment of additional tax due, depending upon whether the estimate was in excess of, or less than, the actual net income of the taxpayer for the year.

The amended return shall be made and filed and any additional tax due paid on or before the twentieth day of the fourth month following the close of the taxable year in which the taxpayer commenced business.

The adjustment of the tax imposed under this chapter and the making of an amended return as provided under this section shall apply only to the first and second taxable years of doing business.

(f) Whenever any taxpayer 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 taxpayer liable to tax under this chapter for such preceding year but not liable for the year following such sale or disposition, and the acquiring taxpayer continues the operation of the business so acquired, the net income to be reported by the acquiring taxpayer for the purpose of determining the amount of its tax under this chapter for the year following the year in which the business was so acquired shall include, in addition to the net income of the acquiring taxpayer during the year ending December 31 or fiscal year preceding, whichever is applicable, the net 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.

This subsection shall not apply to any taxpayer whose tax for the year involved is measured under subsection (b) 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 taxpayer for the year is governed by subsection (c) and adjusted under subsection (e), then in determining the average monthly net income for that purpose there shall be included in addition to the net income of the acquiring taxpayer for the period involved in the determination of the average, the net income of the business or part thereof acquired by the taxpayer for the portion of that period in which the business was not operated by the acquiring taxpayer.

(g) Whenever there is a consolidation or merger of taxpayers subject to the tax imposed by this chapter, the tax shall attach to the taxpayer thus formed and the net income which shall be used for measuring the tax of the taxpayer thus formed shall include the net income of the taxpayers which were consolidated or merged.

(h) If a taxpayer subject to the tax imposed by this chapter terminates business operations during the calendar or fiscal year and other than in an acquisition by another company, or merger, or consolidation, the tax shall apply to the actual net income for the taxable year or part of the taxable year the taxpayer continued business operations.

If a taxpayer subject to the tax imposed by this chapter terminates business operations during the taxable year:

- (1) Before the tax return is filed as required under section 241-5, a short year return shall be made and filed and the tax shall apply to the actual net income for the taxable year or part of the taxable year during which the taxpayer continued business operations; or
- (2) After the return has been made and filed as provided in section 241-5, an amended return shall be made and filed to show the actual net income for the taxable year or part of the taxable year during which the taxpayer continued business operations. Any variance between the tax computed and paid on the basis of the entire net income of the preceding calendar or fiscal year and the actual net income for the final year or part of a year of business operations shall be adjusted and a credit or refund made, or the payment of additional tax shall be made.

The return made under paragraph (1) or (2) shall be filed and the tax imposed by this chapter shall be paid on or before the twentieth day of the fourth month following the month business operations ceased or the close of the taxable year, whichever is earlier.

The tax computed under this subsection shall not be duplicated with respect to the tax of an acquiring taxpayer as determined under subsection (f) or (g)."

SECTION 2. Section 241-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The measure of the tax imposed by this chapter is the entire net income from all sources for the preceding calendar year [preceding January 1], or in the case of a taxpayer operating on a fiscal year basis, for the preceding fiscal year [in which January 1 occurs]. The tax imposed by this chapter is hereby fixed at eleven and seven-tenths per cent thereof."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on January 1, 1989, so that this Act shall apply to the entire net income received for the calendar year 1988, and for calendar years thereafter. In the case of a taxpayer operating on a fiscal year basis,

the Act shall apply to the entire net income received for the fiscal year in which January 1, 1989, occurs and for fiscal years thereafter.

(Approved May 14, 1988.)

**Note**

1. Edited pursuant to HRS §23G-16.5.