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S.B. NO. 677

A Bill for an Act Relating to the General Excise Tax Fees.

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

SECTION 1. Section 237-9, Hawaii Revised Statutes, is amended to read as follows:

“§237-9 Licenses; penalty. (a) Any person who shall have a gross income or gross proceeds of sales or value of products upon which a privilege tax is imposed by this chapter, as a condition precedent to engaging or continuing in such business, shall in writing apply for and obtain from the department of taxation, upon a one-time payment of the sum of [\$2.50 (except when a \$1 fee is prescribed by section 237-10),] \$20, a license to engage in and to conduct such business [for the current tax year], upon condition that the person shall pay the taxes accruing to the State under this chapter, and the person shall thereby be duly licensed to engage in and conduct the business. [The license shall expire on December 31 next succeeding the date of its issuance.] Any person licensed or holding a license under this chapter before January 1, 1990, shall pay a one-time license renewal fee of \$20 on or before January 31, 1990, as a condition precedent to engaging or continuing in business. The license shall not be transferable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The license may be inspected and examined, and shall at all times be conspicuously displayed at the place for which it is issued.

(b) Licenses and applications therefor shall be in such form as the department shall prescribe, except that where the licensee is engaged in two or more forms of business of different classification, the license shall so state on its face. The license provided for by this section shall be effective until canceled in writing. Any application for the reissuance of a previously canceled license identification number after December 31, 1989, shall be regarded as a new license application and subject to the payment of the one time license fee of \$20. The director may revoke or cancel any license issued under this chapter for cause as provided by rules adopted pursuant to chapter 91.

(c) If the license fee is paid, the department shall not refuse to issue a license or revoke or cancel a license for the exercise of a privilege protected by the first amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of

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nonpayment of taxes, nor shall section 237-46 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.

(d) Any person who may lawfully be required by the State, and who is required by this chapter, to secure a license as a condition precedent to engaging or continuing in any business subject to taxation under this chapter, who engages or continues in the business without securing a license in conformity with this chapter, shall be guilty of a misdemeanor. Any director, president, secretary, or treasurer of a corporation who permits, aids, or abets such corporation to engage or continue in business without securing a license in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall be that prescribed by section 237-48 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section.”

SECTION 2. Section 237-12, Hawaii Revised Statutes, is amended to read as follows:

“§237-12 Tax cumulative; extent of license. (a) The tax imposed by this chapter shall be in addition to the license fee imposed under section 237-9 and all other [licenses and] taxes levied by law as a condition precedent to engaging in any business, trade, or calling. A person exercising a privilege taxable under this chapter, subject to the payment of [all licenses and charges] the license fee imposed under section 237-9, which [are conditions] is a condition precedent to exercising the privilege tax, may exercise the privilege [for the current tax year] upon the condition that the person shall pay the tax accruing under this chapter.

(b) In the case of any person entitled to the protection of section [237-10(1),] 237-9(c), the tax shall be collected only through ordinary means.”

SECTION 3. Section 237-16, Hawaii Revised Statutes, is amended to read as follows:

“§237-16 Tax on certain retailing. (a) This section relates to certain retailing in the State as follows:

- (1) This section relates to the sale of tangible personal property, for consumption or use by the purchaser and not for resale, the renting of tangible personal property, and the rendering of services by one engaged in a service business or calling, as defined, to a person who is not purchasing the services for resale, but does not relate to the sale or rental of tangible personal property or the rendering of services to the State, its political subdivisions, or agencies or instrumentalities of the State or a political subdivision, or to the United States or its agencies or instrumentalities (other than national banks), or to a corporation, organization, or other person designated in section 237-23 who is not subject to the tax imposed by this chapter, or to a person licensed under this chapter in connection with the person’s business.
- (2) This section relates to the business of a contractor, as defined, but does not relate to contracting with, or any gross income or proceeds of a subcontractor if the principal contract is with the State, its political subdivisions, or agencies or instrumentalities of the State or a political subdivision, or with the United States or its agencies or instrumentalities (other than national banks), or with a person designated in section 237-23 who is not subject to the tax imposed by this chapter, or with a person licensed under this chapter in connection with the person’s business.

- (3) This section relates to furnishing of transient accommodations in a hotel, apartment hotel, or other place in which lodgings are regularly furnished to transients for a consideration which includes the rendering of services.

(b) There is hereby levied, and shall be assessed and collected annually, a privilege tax against persons engaging or continuing within the State in the retailing to which this section relates, on account of such retailing activities, as set forth in subsection (a), equal to four per cent of the gross proceeds of sale or gross income received or derived from such retailing. Persons on whom a tax is imposed by this section hereinafter are called "retailers".

[(c) Every person upon whom a tax is levied by this section shall inform the department of taxation, at the time of obtaining the person's license, or at the time of renewal thereof, that the person is engaged in a retailing activity to which this section relates, and the same shall be noted upon the license. If a taxpayer, after obtaining the taxpayer's license, or a renewal thereof, engages in a retailing activity to which this section relates, the taxpayer having been previously not engaged in any such activity, the taxpayer thereupon shall submit the taxpayer's license to the department for the making of an appropriate notation thereon. In addition to the fees prescribed by section 237-9, except as otherwise provided by section 237-10, there shall be paid by the retailer, at the time that the notation upon the retailer's license hereby required is made, a fee of 50 cents. Any person who by this subsection is required to have noted on the person's license that the person is engaged in a retailing activity to which this section relates and who fails to do so, shall be subject to section 237-46 the same as if the person had no license.

(d) [(c)] No retailer shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this section is not considered as an element in the price to the consumer. Any person violating this subsection shall be fined not more than \$50 for each offense.

[(e) (d)] This section shall not cause the tax upon a taxpayer, with respect to any item of the taxpayer's gross income, to exceed four per cent."

SECTION 4. Section 237-23, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The exemptions enumerated in subsection (a)(5) to (8) shall apply only:

- (1) To those persons who shall have registered with the department of taxation [on or before January 31 of each calendar year, or within one month after the commencement of business,] by filing a written application for registration in such form as the department shall prescribe, [and] shall have paid [for] the registration [an annual] fee of [\$1,] \$20, and shall have had the exemption allowed by the department or by a court or tribunal of competent jurisdiction upon appeal from any assessment resulting from disallowance of the exemption by the department; and
- (2) To activities from which no profit inures to the benefit of any private stockholder or individual, except for death or other benefits to the members of fraternal societies; and
- (3) To the fraternal, religious, charitable, scientific, educational, communal, or social welfare activities of such persons, or to the activities of such hospitals, infirmaries, and sanitariums as such, 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 furtherance of the exempt activities of such persons.

(c) In order to obtain allowance of an exemption an application for exemption shall be filed in the form of an affidavit or affidavits setting forth in general all

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facts affecting the right to the exemption and such particular facts as the department may require, to which shall be attached such records, papers, and other information as the department may prescribe. [Such] The application for exemption shall be filed on or before March 31 of the first year of registration or within three months after the commencement of business. In the event of allowance of the exemption no further application therefor need be filed unless there [be] is a material change in the facts[, but such person nevertheless shall register annually]. In the event of disallowance of the exemption, a license may be obtained upon payment of the required fee as provided by section 237-9, less the [\$1] \$20 already paid under this section, which shall be credited thereon. In the event the registrant has a license under this chapter no further fee shall be required for registration under this section.”

SECTION 5. Section 237-46, Hawaii Revised Statutes, is amended to read as follows:

“§237-46 Collection by suit; injunction. The department of taxation may collect taxes due and unpaid under this chapter, together with all accrued penalties, by action in assumpsit or other appropriate proceedings in the circuit court of the judicial circuit in which the privilege taxed has been exercised. After delinquency shall have continued for sixty days, or if any person lawfully required so to do under this chapter shall fail to apply for and secure a license as provided by this chapter for a period of sixty days after the first date when the person was required under this chapter to secure the same, [or if any person lawfully required so to do under this chapter shall fail to apply for and secure, on or before April 1, or shall fail to maintain in effect, a renewal of a license as provided by this chapter,] the department may proceed in the circuit court of the judicial circuit in which the privilege taxed or taxable has been exercised, to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all taxes and penalties and interest due under this chapter, or until such license is secured, or both, as the circumstances of the case may require.”

SECTION 6. Section 237-10, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on January 1, 1990; except that sections 2, 5, and 6 of the Act shall take effect on July 1, 1990.

(Approved April 11, 1989.)

Note

1. Edited pursuant to HRS §23G-16.5.