

ACT 181

S.B. NO. 3246

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

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

SECTION 1. The purpose of this Act is to provide for the appropriate levy, assessment, and collection of the general excise tax on maintenance fee assessments paid to time share owners associations, commonly known as associations of interval owners. The legislature notes that many of the associations of interval owners have not paid the general excise tax since the statutory recognition of the associations by chapter 514E, Hawaii Revised Statutes. The general excise tax is paid through voluntary self-assessment. Consequently, the department of taxation did not become aware of the nonpayment of the tax until recently. Upon finding that many associations of interval owners had not been paying the appropriate general excise taxes, the department of taxation properly audited the associations and has proceeded to retroactively assess and collect the unpaid general excise taxes. The associations of interval owners, believing that they were not subject to the tax, objected to the retroactive assessments. The associations of interval owners also argued that their liability for retroactive

assessments would unfairly require payments of special assessments by their current interval owners.

The legislature finds that the department of taxation is correct in its interpretation of the general excise tax law, and that the associations of interval owners should have paid the tax from their inception. Nevertheless, the legislature takes notice that retroactive assessments would require the associations of interval owners to either make special assessments unfair to current time share owners, or to seek payment from former owners.

The purpose of this Act is to alleviate this unique situation by preventing the retroactive assessment and collection of the general excise tax by the department of taxation, by:

- (1) Allowing the refund and return of taxes, interest, or penalties collected from those associations of interval owners which did appropriately pay their general excise taxes; and
- (2) Directing the department of taxation to levy the general excise tax on associations of interval owners on a prospective basis.

SECTION 2. The department of taxation shall not levy, assess, or collect any tax imposed by section 237-13(10), Hawaii Revised Statutes, on amounts assessed and received by an association of interval owners established in accordance with section 514E-29, Hawaii Revised Statutes, in payment of maintenance fee assessments imposed by the association of interval owners, prior to July 1, 1990.

SECTION 3. An association of interval owners established in accordance with section 514E-29, Hawaii Revised Statutes, which prior to July 1, 1990, has paid over to the department of taxation taxes imposed by section 237-13(10), Hawaii Revised Statutes, may apply, within the limitation periods prescribed by section 237-40(d), Hawaii Revised Statutes, for a refund of that portion of the tax imposed on maintenance fee assessments, including any interest or penalty paid. The amount refunded shall be limited to the amounts paid over to the department of taxation and shall not include any interest provided by section 231-23(d), Hawaii Revised Statutes.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 19, 1990.)