

ACT 184

S.B. NO. 3128

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 in addition to continuing with the State's highway construction and maintenance program, it is imperative that initiatives be continued to decrease the number of motor vehicles on our highways. The legislature further finds that mass transportation, or more specifically the transportation of individuals by bus or fixed rail rapid transit, is a viable means of decreasing the number of motor vehicles on our highways. The legislature recognizes that capital costs for the development of an efficient bus or

fixed rail rapid transit system may be substantial and agree that a reasonable distribution of financial responsibility between participating government and private parties is essential.

The city and county of Honolulu is in the process of developing a fixed rail rapid transit system for Oahu. It is apparent that the city will not be able to absorb the estimated cost required to construct such a system, and that assistance from state, federal, and private sector sources is imperative. In addition, the neighbor island counties presently have bus systems in operation and are in need of financial assistance to expand their systems by purchasing new buses.

The legislature finds that the transit capital development fund, established pursuant to chapter , Hawaii Revised Statutes, is a viable method in which to assist the city and county of Honolulu in the development of a fixed rail rapid transit system and to assist the neighbor island counties in the enhancement of their present bus transportation systems.

The legislature finds that the transit capital development fund will provide the city and county of Honolulu with an opportunity to finance the construction of a fixed rail rapid transit system with thirty-five per cent of the cost coming from state dollars, thirty per cent coming from federal dollars, and thirty-five per cent of the cost from private source revenues. The legislature further finds that confirmation of the amount of private source revenues available to offset the construction costs of a fixed rail rapid transit system will not be known until formal proposals are sought. In addition, the federal government has indicated that their anticipated thirty per cent contribution toward the construction costs for a fixed rail rapid transit system will not be authorized unless a confirmed, dedicated source of funding is established. The legislature concludes that a complete and comprehensive financial plan for the development of a fixed rail rapid transit system is necessary to proceed with this much needed transportation improvement.

The purpose of this Act is to authorize the counties to establish a general excise and use tax surcharge of one-half per cent for a maximum of ten years. This surcharge shall only take effect in the event that private source revenues are insufficient to meet the county/private sector matching requirement pursuant to the transit capital development fund for the development of a fixed rail rapid transit system for Oahu. This surcharge may also be used to fund mass transportation, infrastructure, and park needs for the counties of Maui, Kauai, and Hawaii.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- County general excise and use tax surcharge. (a) Each county, except the county of Kalawao, may establish a general excise and use tax surcharge of one-half per cent. Each county shall establish the general excise and use tax surcharge by ordinance adopted before October 1, 1992, which shall take effect on January 1, 1993, and remain in effect for ten years through December 31, 2002, unless earlier repealed, pursuant to subsection (c). No ordinance shall be adopted until the county has conducted a public hearing on the proposed ordinance. Notice of the public hearing shall be published in a newspaper of general circulation within the county at least twice within a period of thirty days immediately preceding the date of the hearing. If a county fails to adopt a county general excise and use tax surcharge ordinance by October 1, 1992, the county shall not be covered by this section.

(b) Each county shall notify the director of taxation within ten days after the county has adopted a general excise and use tax surcharge ordinance, and the

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director of taxation shall levy, assess, collect, and otherwise administer the general excise and use tax surcharge for the taxable year beginning January 1, 1993, and for taxable years thereafter through December 31, 2002, as provided by chapters 237 and 238.

(c) The general excise and use tax surcharges received from the State by each county shall be used as follows:

- (1) The city and county of Honolulu shall use the surcharges to develop a fixed rail rapid transit system. All private source revenues generated or pledged to develop a fixed rail rapid transit system that are received prior to the operation of the system shall be used as county matching funds for moneys requested from the transit capital development fund, pursuant to chapter , before surcharges may be used. The director of finance shall determine whether or not private sources are adequate to meet county matching requirements. The director of finance shall submit a report of the findings to the legislature. Upon legislative acceptance of the findings, within sixty days of the first regular legislative session convened following the submittal of the findings, no additional moneys may be expended from the transit fund; provided that:
 - (A) Such limitation on the expenditure of moneys from the transit fund shall not occur prior to December 31, 1992; and
 - (B) Private source revenues received prior to the operation of the system shall be committed to the funding of the fixed rail rapid transit system prior to any determination regarding the duration of the surcharge.
- (2) All surcharges collected but not used for the purpose of developing a fixed rail rapid transit system shall be deposited into the state treasury to be returned to the taxpayers in the form of an income tax credit, the amount of the credit to be determined by law.
- (3) The general excise and use tax surcharge shall be repealed upon the determination by the director of finance that all authorized capital costs of the fixed rail rapid transit system or county projects under paragraph (4) have been collected and distributed pursuant to chapter 248.
- (4) The counties of Hawaii, Kauai, and Maui shall use the surcharges for public transportation systems, including mass transportation, sewage, or water development, and parks, including park operation, maintenance, infrastructure, or purchase.

(d) As used in this section:

“Capital costs” means nonrecurring costs required to construct a transit facility or system, including costs of land acquisition and development, acquiring of rights-of-way, planning, design, and construction, including equipping and furnishing the facility or system.

“Private source revenue” means all funds, concessions, development rights, or those assets of value contractually agreed upon with the county from sources other than state, county, or federal governments as a result of, or for the purposes of, developing mass transportation.”

SECTION 3. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- County surcharge excise tax credit. If the collection of the county general excise and use tax surcharge starts on January 1, 1993, as provided in sections 46- , 237- , and 238- , then for taxable years beginning after

December 31, 1992, and ending before January 1, 2003, each resident individual taxpayer, who files an individual income tax return for a taxable year, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, may claim a county surcharge excise tax credit in the amount computed under this section against the resident taxpayer's individual income tax liability for the taxable year for which the individual income tax return is being filed; provided that a resident individual who has no income or no income taxable under this chapter and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for federal or Hawaii state individual income tax purposes may claim this credit. The amount of the credit shall be computed by multiplying a resident individual's adjusted gross income by sixty per cent and the product of that multiplication by .006; provided that if an individual is filing jointly with the individual's spouse their jointly determined adjusted gross income shall be used; provided further that the amount of the credit shall not exceed \$450 nor be less than \$18.

(b) The tax credit under this section shall not be available to (1) any person who has been convicted of a felony and who has been committed to prison and has been physically confined for the full taxable year; (2) any person who would otherwise be eligible to be claimed as a dependent but who has been committed to a youth correctional facility and has resided at the facility for the full taxable year; or (3) any misdemeanor who has been committed to jail and has been physically confined for the full taxable year.

(c) The tax credits claimed by a resident taxpayer pursuant to this section shall be deductible from the resident taxpayer's individual income tax liability, if any, for the tax year in which they are properly claimed. If the tax credits claimed by a resident taxpayer exceed the amount of income tax payment due from the resident taxpayer, the excess of credits over payments due shall be refunded to the resident taxpayer; provided that tax credits properly claimed by a resident individual who has no income tax liability shall be paid to the resident individual.

(d) All claims for tax credits under this section, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit."

SECTION 4. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§237- County general excise and use tax surcharge; administration. (a) The county general excise and use tax surcharge, upon the adoption of county ordinances under section 46- , shall be levied, assessed, and collected as provided in this section on all gross proceeds and gross income taxable under this chapter at the four per cent tax rate in such manner that the combined state general excise tax and the county general excise and use tax surcharge tax shall be four and one-half per cent in those counties adopting the surcharge. All provisions of this chapter shall apply to the county general excise and use tax surcharge; and with respect to the surcharge, the director shall have all the rights and powers provided under this chapter. In addition, the director of taxation shall have the exclusive rights and power to determine the county or counties in which a person is engaged in business and, in the case of a person engaged in business in more than one county, the director shall determine through apportionment or other means, that portion of the general excise and use tax surcharge attributable to business conducted in each county.

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(b) Each county general excise and use tax surcharge adopted pursuant to section 46- (a) shall be levied as of January 1, 1993, and shall continue for a period of ten years through December 31, 2002, or until earlier repealed.

(c) The county general excise and use tax surcharge shall be imposed on the gross proceeds or gross income of all written contracts that require the passing on of the taxes imposed under this chapter; provided that if the gross proceeds or gross income are received as payments after December 31, 1992, on contracts entered into before the effective date of this Act, and the written contracts do not provide for the passing on of increased rates of taxes, the county general excise and use tax surcharge shall not be imposed on the gross proceeds or gross income covered under the written contracts. The county general excise and use tax surcharge shall be imposed on the gross proceeds or gross income from all contracts entered into on or after the effective date of this Act whether or not the contract allows for the passing on of any tax or any tax increases.

(d) No county general excise and use tax surcharge shall be established on any:

- (1) Gross income or gross proceeds taxable under this chapter at the one-half per cent tax rate;
- (2) Gross income or gross proceeds taxable under this chapter at the 0.15 per cent tax rate; or
- (3) Transactions, amounts, persons, gross income, or gross proceeds exempt from tax under this chapter.

(e) The director of taxation shall revise the general excise tax forms to provide for:

- (1) The clear and separate designation of the imposition and payment of the county general excise and use tax surcharge; and
- (2) The designation by the taxpayer of the county to which the county general excise and use tax surcharge payment is attributable, based on the county in which the surcharge was actually passed through to the consumer; provided that when the payment is attributable to more than one county, the taxpayer shall designate the amount of payment attributable to each respective county.

(f) All taxpayers who file on a fiscal year basis whose fiscal year ends after December 31, 1992, or after December 31, 2002, shall file a short period annual return for the period preceding January 1, 1993, or preceding January 1, 2003. Each fiscal year taxpayer shall also file a short period annual return for the period starting after December 31, 1992, and ending before January 1, 1994, and for the period starting after December 31, 2002, and ending before January 1, 2004.

All monthly, annual, and amended returns due under this chapter for any period preceding January 1, 2003, which are submitted to the department after December 31, 2002, shall include in payments submitted with the return any county general excise and use tax surcharge that may be due for the period preceding January 1, 2003."

SECTION 5. Chapter 238, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§238- County general excise and use tax surcharge; administration. (a) The county general excise and use tax surcharge, upon the adoption of a county ordinance under section 46- , shall be levied, assessed, and collected as provided in this section on the value of property taxable under this chapter at the four per cent tax rate under section 238-2(3) in a manner that the combined state use tax and the county general excise and use tax surcharge shall be four and one-half

per cent in those counties adopting the surcharge. All provisions of this chapter shall apply to the county general excise and use tax surcharge. With respect to the surcharge, the director shall have all the rights and powers provided under this chapter. In addition, the director of taxation shall have the exclusive rights and power to determine the county or counties in which a person imports or purchases tangible personal property and, in the case of a person importing or purchasing tangible property in more than one county, the director shall determine through apportionment or other means, that portion of the general excise and use tax surcharge attributable to the importation or purchase in each county.

(b) Each county general excise and use tax surcharge shall be levied as of January 1, 1993, and shall continue for a period of ten years through December 31, 2002, or until earlier repealed.

(c) No county general excise and use tax surcharge shall be established upon any use taxable under this chapter at the one-half per cent tax rate or upon any use that is not subject to taxation or that is exempt from taxation under this chapter.

(d) The director of taxation shall revise the use tax forms to provide for:

- (1) The clear and separate designation of the imposition and payment of the county general excise and use tax surcharge; and
- (2) The designation by the taxpayer of the county to which the county general excise and use tax surcharge payment is attributable, based on the county in which the surcharge was actually passed through to the consumer; provided that when the payment is attributable to more than one county, the taxpayer shall designate the amount of payment attributable to each respective county.

(e) All taxpayers who file on a fiscal year basis whose fiscal year ends after December 31, 1992, or after December 31, 2002, shall file a short period annual return for the period preceding January 1, 1993, or preceding January 1, 2003. Each fiscal year taxpayer shall also file a short period annual return for the period starting after December 31, 1992, and ending before January 1, 1994, and for the period starting after December 31, 2002, and ending before January 1, 2004.

All monthly, annual, and amended returns due under this chapter for any period preceding January 1, 2003, which are submitted to the department after December 31, 2002, shall include in payments submitted with the return any county general excise and use tax surcharge that may be due for the period preceding January 1, 2003.”

SECTION 6. Chapter 248, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§248- County general excise and use tax surcharge; disposition of proceeds. (a) All county general excise and use tax surcharges collected by the director of taxation shall be paid into the state treasury each month within ten working days after collection, and shall be kept by the state director of finance in special accounts. Out of the county general excise and use tax surcharges paid into the state treasury special accounts, the state director of finance shall retain, from time to time, sufficient amounts to reimburse the State for the costs of assessment, collection, and disposition of the county general excise and use tax surcharge incurred by the State. Amounts retained shall be general fund realizations of the State.

(b) The costs of assessment, collection, and disposition of county general excise and use tax surcharges shall be withheld from payment to the several

counties by the State out of the county general excise and use tax surcharges collected for the current calendar year.

The costs of assessment, collection, and disposition of the county general excise and use tax surcharges shall be borne by each of the several counties in an amount proportional to the total amount of surcharges allocated to that county divided by the total amount of surcharges collected for the entire State for the preceding calendar year.

For the purpose of this section, the costs of assessment, collection, and disposition of the county general excise and use tax surcharges shall include any and all costs, direct or indirect, which are deemed necessary and proper to effectively administer this section and sections 237- and 238- . Costs include refunds or reductions of income taxes under section 235-110.7 attributable to the county general excise and use tax surcharge.

(c) After the deduction of the costs under subsection (b), the state director of finance shall pay the remaining balance on a monthly or quarterly basis to the director of finance for each county which has adopted a county general excise and use tax surcharge under section 46- . The payments shall be made as soon as possible after the county general excise and use tax surcharges have been paid into the state treasury special accounts, or after the disposition of any tax appeal, as the case may be. All county general excise and use tax surcharges collected shall be distributed by the state director of finance to the county in which the county general excise tax surcharge is generated and shall be a general fund realization of the county to be used for the purposes specified in section 46- by each of the several counties.”

SECTION 7. Section 235-110.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be allowed to each taxpayer subject to the tax imposed by this chapter a capital goods excise tax credit which shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

The amount of the tax credit shall be determined by the application of the following rates against the cost of the eligible depreciable tangible personal property used by the taxpayer in a trade or business and placed in service within Hawaii after December 31, 1987. For calendar years beginning after: December 31, 1987, the applicable rate shall be three per cent; December 31, 1988, and thereafter, the applicable rate shall be four per cent[.], except that for the period January 1, 1993, through December 31, 2002, and if the county general excise and use tax surcharge is in effect the applicable rate shall be four and one-half per cent. For taxpayers with fiscal taxable years, the applicable rate shall be the rate for the calendar year in which the eligible depreciable tangible personal property used in the trade or business is placed in service within Hawaii.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for eligible depreciable tangible personal property which is placed in service by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined by rules.

In the case of eligible depreciable tangible personal property for which a credit for sales or use taxes paid to another state is allowable under section 238-3(i), the amount of the tax credit allowed under this section shall not exceed the amount of use tax, and for the period January 1, 1993, through December 31, 2002, the amount of the county general excise and use tax surcharge, actually paid under chapter 238 relating to such tangible personal property.

If a deduction is taken under section 179 (with respect to election to expense certain depreciable business assets) of the Internal Revenue Code of 1954, as amended, no tax credit shall be allowed for that portion of the cost of property for which the deduction was taken.”

SECTION 8. Section 235-110.7, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) As used in this section, the definition of section 38 property (with respect to investment in depreciable tangible personal property) as defined by section 48(a)(1)(A), (a)(1)(B), (a)(3), (a)(4), (a)(7), (a)(8), (a)(10)(A), (b), (c), (f), (l), (m), and (s) of the Internal Revenue Code of 1954, as amended as of December 31, 1984, is operative for the purposes of this section only.

As used in this section:

“Cost” means (1) the actual invoice price of the tangible personal property, or (2) the basis from which depreciation is taken under section 167 (with respect to depreciation) or from which a deduction may be taken under section 168 (with respect to accelerated cost recovery system) of the Internal Revenue Code of 1954, as amended, whichever is less.

“Eligible depreciable tangible personal property” is section 38 property as defined by the operative provisions of section 48 and having a depreciable life under section 167 or for which a deduction may be taken under section 168 of the federal Internal Revenue Code of 1954, as amended.

“Placed in service” means the earliest of the following taxable years:

- (1) The taxable year in which, under the:
 - (A) Taxpayer’s depreciation practice, the period for depreciation; or
 - (B) Accelerated cost recovery system, a claim for recovery allowances; with respect to such property begins; or
- (2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

“Purchase” means an acquisition of property.

“Tangible personal property” means tangible personal property which is placed in service within Hawaii after December 31, 1987, and the purchase or importation of which resulted in a transaction which was subject to the imposition and payment of tax at the rate of four per cent, except that for the period January 1, 1993, through December 31, 2002, and if the county general excise and use tax surcharge is in effect the tax rate shall be four and one-half per cent, under chapter 237 or 238. “Tangible personal property” does not include tangible personal property which is an integral part of a building or structure or tangible personal property used in a foreign trade zone, as defined under chapter 212.”

SECTION 9. Section 237-34, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All monthly and annual returns shall be transmitted to the office of the taxation district in which the privilege upon which the tax accrued is exercised. [Where the privilege is exercised in more than one taxation district the returns shall be transmitted to the office of the first taxation district.]”

SECTION 10. Section 238-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For purposes of the taxes due under [section] sections 238-2(3)[.] and 238-, every seller having in the State, regularly or intermittently, any property,

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tangible or intangible, any place of business, or any representation as hereinabove defined, (and irrespective of the seller's having or not having qualified to do business in the State) shall, if the seller makes sales of property for use in the State (whether or not the sales are made in the State) collect from the purchaser the [tax] taxes imposed by [section] sections 238-2(3) and 238-__ on the use of the property so sold by the seller. The collection shall be made within twenty days after the accrual of the tax or within such other period as shall be fixed by the director of taxation upon the application of the seller, and the seller shall give to the purchaser a receipt therefor in the manner and form prescribed by the director; provided that this subsection shall not apply to vehicles registered under section 286-50."

SECTION 11. The State shall enter into a development agreement with the city and county of Honolulu for the development of a fixed rail rapid transit system by November 15, 1991. The terms of the development agreement shall be as described in a bill establishing the transit capital development fund, in any form passed by the legislature, regular session of 1990. This development agreement shall be submitted to the legislature for review by December 1, 1991. The legislature may disapprove the development agreement by concurrent resolution during the 1992 regular session.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 13. This Act shall take effect upon its approval only if a bill establishing the transit capital development fund, in any form passed by the legislature, regular session of 1990, becomes an Act, and shall remain in effect until December 31, 2002, except that if no development agreement is submitted to the legislature by December 1, 1991, or if the legislature disapproves the development agreement, pursuant to section 11 of this Act, the provisions of this Act shall be repealed; and except that the provisions of section 9 shall take effect on January 1, 1991.

(Approved June 19, 1990.)

Note

1. Edited pursuant to HRS §23G-16.5.