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S.B. NO. 1218

A Bill for an Act Relating to Return Filing Requirements for the Public Service Company Tax.

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

SECTION 1. Section 239-4, Hawaii Revised Statutes, is amended to read as follows:

“**§239-4 Returns.** Each public service company, on or before [April 20 in each year,] the twentieth day of the fourth month following the close of the taxable year, shall file with the office of the department of taxation for the district within which the principal office of the public service company is maintained a return in such form as the department may prescribe, showing its taxable gross income for the preceding [calendar] taxable year. In case any public service company [carries on] engages in lines of business other than its public service company business, the receipts therefrom shall not be subject to tax under this chapter, but the same tax liabilities shall attach to [such] the public service company on account of [such] the other lines of business as would exist if no public service company business were [done.] engaged in. In the case of a public utility subject to the rate of tax imposed by section 239-5(a) or (b), if the public utility [carries on] engages in lines of business other than its public utility business the real property used in connection with the other lines of business shall be taxed the same as if no public utility business were done.”

SECTION 2. Section 239-7, Hawaii Revised Statutes, is amended to read as follows:

“**§239-7 Assessments; payments; chapter 235 applicable.** The tax imposed by this chapter shall be assessed against each public service company in the manner provided by this chapter, and shall be paid to the department of taxation at the times, and in the manner (in installments or otherwise) hereinafter prescribed.

The total amount of the tax imposed by this chapter shall be [due on January 1 and payable on April 20 in each year.] paid on or before the twentieth day of the fourth month following the close of the taxable year. The public service company may elect to pay the tax in four equal installments, in which case the first installment shall be paid on [April 20, and the second, third, and fourth installments on June 20, September 20, and December 20, respectively. The tax, or any installment thereof, at the election of the public service company may be paid prior to the date above prescribed.] or before the twentieth day of the fourth month following the close of the taxable year, the second installment shall be paid on or before the twentieth day of the sixth month following the close of the taxable year, the third installment shall be paid on or before the twentieth day of the ninth month following the close of the taxable year, and the fourth installment shall be paid on or before the twentieth day of the twelfth month following the close of the taxable year. If any installment is not paid on or before the date fixed for its payment, the department [may], at its election, may cause the whole of the tax unpaid to become payable upon not less than ten days' notice and demand, and this amount shall be paid upon the date so fixed in the notice and demand from the department.

The department shall prescribe the forms in which returns shall be made

so as to reflect clearly the liability of each public service company subject to this tax, and may provide in the forms for such additional information as it may deem necessary. All provisions of the laws, not inapplicable and not inconsistent with this chapter, relating to returns for income tax purposes; the assessment (including additional assessments), collection, and payment (in installments or otherwise) of income taxes and the powers and duties of the department and the director of finance in connection therewith, and relating to appeals from or other adjustments of such assessments, limitation periods for assessments, enforcement of attendance of witnesses, and the production of evidence, examination of witnesses and records, the effect of assessments, tax books, and lists and other official tax records as evidence, delinquent dates and penalties, and the rights and liabilities (civil and criminal) of taxpayers and other persons in connection with any matters dealt with by chapter 235, are made applicable (1) to the taxes and the assessment, payment, and collection thereof, provided by this chapter, and (2) to the department and director of finance in connection with [such] the taxes and the assessment, payment, or enforcement of payment and collection thereof, and (3) to taxpayers and other persons affected by this chapter, as the case may be. The provisions of chapter 235 regarding the limitation period for assessment and refunds shall run from the filing of the final return for the taxable year, or the due date prescribed for the filing of the return, whichever is later, and not from the due date of any payment."

SECTION 3. Section 239-9, Hawaii Revised Statutes, is amended by amending subsections (a) to (f) to read as follows:

"(a) In general. The tax imposed by this chapter applies to every public service company:

- (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) Third year of doing business; earlier years, how governed. If the company 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 sections 239-4 and 239-7.

However, if [paragraph (2) of] subsection (a)(2) applies, or if the company though in business at the commencement of the calendar year was not in business during the preceding [calendar] year, or was in business during the preceding [calendar] year or a part thereof but not prior thereto, the tax shall be returned and paid as provided in subsections (c) and (d).

(c) First year of doing business. The measure of the tax for the year in which the company begins business is an estimate of the gross income of the public service company for that year or for the part of that year in which it is in business.

The tax thereon for the year in which the company begins business shall be at the following rate:

- (1) If [paragraph (2) of] subsection (a)(2) applies, at the rate of four per cent, or
- (2) If [paragraph (1) of] subsection (a)(1) applies but the company though in business at the commencement of the calendar year[,] was not in business during any part of the preceding [calendar] year, the tax shall be at the rate provided by sections 239-5 and 239-6, except that there shall be no adjustment of the rate of tax on account of the

ratio of the net income to the gross income being in excess of fifteen per cent and it shall be assumed for purposes of this subsection and subsection (e) that the ratio is fifteen per cent or less.

The estimate shall be made and the tax returned on or before the twentieth day of the third month after the month in which the company begins business and shall be subject to [redetermination by the director of taxation and] adjustment by the filing of an amended return as provided in subsection (e). Payment of the tax shall accompany the return unless time for payment is extended by the director of taxation[; such]. 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] taxable year.

(d) Second year of doing business. The measure of the tax for the year following the year in which the company began business is an estimate of the average gross income for a [calendar] taxable year, subject to [redetermination and] adjustment by the filing of an amended return as provided in subsection (e). The estimate shall be made and the tax returned and paid at the times provided for other companies which are in business at the commencement of the calendar year. The tax thereon shall be at the rate provided by sections 239-5 and 239-6, except that there shall be no adjustment of the rate of tax on account of the ratio of the net income to the gross income being in excess of fifteen per cent and it shall be assumed for purposes of this subsection and subsection (e) that the ratio is fifteen per cent or less.

(e) Adjustment of estimates. [Every estimate made under subsections (c) and (d) shall be subject to redetermination by the director after the close of the year for which the estimate is made, and the final amount of tax shall be based upon the estimated gross income as adjusted under this subsection.] 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 (c) or (d).

If the year for which the estimate is made is the year in which the company commenced doing business and subsection (c) applies, any variance between the estimate and the actual gross income for that year shall be adjusted [by the director] and a credit or refund made, or [assessment issued, dependent] payment of additional tax due, depending upon whether the estimate was in excess of, or less than, the actual gross income of the company for that year.

If the year for which the estimate is made is the year following the year in which the company commenced doing business and subsection (d) applies, the average monthly gross income during the period from and after the commencement of business to the close of the year for which the estimate was made shall be determined and multiplied by twelve. [The amount so computed shall be compared with the estimate and an adjustment made so as to allow a credit or refund if and to the extent that the estimate was in excess of this amount, or issue an assessment if and to the extent that the estimate was less than this amount.] Any variance between the estimate and the amount so computed 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 amount computed.

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 company 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) Acquisition of business of another company. Whenever any public service company subject for any year to the tax imposed by this chapter, shall have

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acquired by purchase or otherwise during the preceding year the business or any part thereof of another public service company liable to tax under this chapter for [such] the preceding year but not liable for the year following [such] the sale or disposition, and the acquiring company continues the operation of the business so acquired, the gross income to be reported by the acquiring company 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 gross income of the acquiring company during the year ending December 31 or fiscal year preceding, whichever is applicable, the gross income of the business or part thereof so acquired for [such] the portion of [such] the preceding year as [such] the business was not operated by the acquiring company.

This subsection shall not apply to any company whose tax for the year involved is measured under subsection (c) by an estimate of gross income for [such] the year subject to adjustment after the close of the year.

If the first paragraph of this subsection applies but the tax of the acquiring company for the year is governed by subsection (d) and adjusted under subsection (e), then in determining the average monthly gross income for that purpose there shall be included, in addition to the gross income of the acquiring company for the period involved in the determination of the average, the gross income of the business or part thereof acquired by the company for the portion of that period in which the business was not operated by the acquiring company.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 1, 1992, so that this Act shall apply to the entire gross income received for the calendar year 1991, and for calendar years thereafter. In the case of a taxpayer operating on a fiscal year basis, the Act shall apply to the entire gross income received for the fiscal year in which January 1, 1992, occurs and for fiscal years thereafter.

(Approved April 18, 1991.)