

**ACT 263**

H.B. NO. 1021

A Bill for an Act Relating to the State Highway Fund.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
RENTAL MOTOR VEHICLE AND TOUR VEHICLE SURCHARGE TAX**

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Department” means the department of taxation.

“Director” means the director of taxation.

“Lessor” means any person in the business of providing rental motor vehicles to the public.

“Person” has the same meaning as defined in section 237-1.

“Rental motor vehicle” or “vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power but which is not operated upon rails, but excluding mopeds as defined in section 286-2, which is rented or leased or offered for rent or lease in this state, whether for personal or commercial use, for a period of six months or less.

“Surcharge tax” means the rental motor vehicle and tour vehicle surcharge tax established under this chapter.

“Tour vehicle” means any vehicle, including vans, minibuses, and buses used for the purpose of transporting persons for pleasure or sightseeing trips. The term does not include any vehicle used solely for the purposes of transporting

individuals to and from a place of work or a public or private school or of transporting persons with disabilities.

“Tour vehicle operator” means a person regulated by the public utilities commission under chapter 271 and engaged in the business of transporting persons via tour vehicles.

§ -2 **Rental motor vehicle and tour vehicle surcharge tax.** (a) There is levied and shall be assessed and collected each month a rental motor vehicle surcharge tax of \$2 a day or any portion of a day that a rental motor vehicle is rented or leased. The rental motor vehicle surcharge tax shall be levied upon the lessor.

(b) There is levied and shall be assessed and collected each month a tour vehicle surcharge tax of \$65 for each tour vehicle used or partially used during the month and categorized by the public utilities commission as an eighteen or over passenger carrier vehicle and of \$15 for each tour vehicle used or partially used during the month and categorized by the public utilities commission as an eight to seventeen passenger carrier vehicle. The tour vehicle surcharge tax shall be levied upon the tour vehicle operator.

§ -3 **Certificate of registration.** (a) Each person as a condition precedent to engaging or continuing in the business of providing rental motor vehicles to the public or engaging or continuing in the tour vehicle operator business shall register with the director. A person required to so register shall make a one-time payment of \$20, upon receipt of which the director shall issue a certificate of registration in such form as the director determines, attesting that the registration has been made. The registration 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 registration, or in lieu thereof a notice stating where the registration may be inspected and examined, shall at all times be conspicuously displayed at the place for which it is issued.

(b) The registration shall be effective until canceled in writing. Any application for the reissuance of a previously canceled registration identification number shall be regarded as a new registration application and shall be subject to the payment of the one-time registration fee in subsection (a). The director may revoke or cancel any certificate of registration issued under this chapter for cause as provided by rule under chapter 91.

(c) If the registration fee is paid, the department shall not refuse to issue a registration or revoke or cancel a registration 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 nonpayment of taxes, nor shall section -13 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 register as a condition precedent to engaging or continuing in the business of providing rental motor vehicles or tour vehicles to the public subject to taxation under this chapter, who engages or continues in the business without registering in conformity with this chapter, shall be guilty of a misdemeanor. Any officer or director of a corporation who permits, aids, or abets the corporation to engage or continue in business without registering in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall be that prescribed by section 231-34 for violation of that section.

§ -4 **Return and payments; penalties.** (a) On or before the last day of each calendar month, every person taxable under this chapter during the preceding calendar month shall file a sworn return with the director in such form as the director shall prescribe together with a remittance for the amount of the surcharge tax in the form required by section -5. Sections 237-30 and 237-32 shall apply to returns and penalties made under this chapter to the same extent as if the sections were set forth specifically in this section.

(b) Notwithstanding subsection (a), the director, for good cause, may permit a person to file the person's return required under this section and make payments thereon:

- (1) On a quarterly basis during the calendar year, the return and payment to be made on or before the last day of the calendar month after the close of each quarter, to wit, on or before April 30, July 31, October 31, and January 31; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the surcharge taxes due thereon and that the person's total surcharge tax liability for the calendar year under this chapter will not exceed \$2,000; or
- (2) On a semiannual basis during the calendar year, the return and payment to be made by or before the last day of the calendar month after the close of each six-month period, to wit, on July 31 and January 31; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the surcharge taxes due thereon and that the person's total surcharge tax liability for the calendar year under this chapter will not exceed \$1,000.

The director, for good cause, may permit a person to make monthly payments based on the person's estimated quarterly or semiannual liability; provided that the person files a reconciliation return at the end of each quarter or at the end of each six-month period during the calendar year, as provided in this section.

(c) If a person filing the return on a quarterly or semiannual basis, as provided in this section, becomes delinquent in either the filing of the return or the payment of the surcharge taxes due thereon, or if the liability of a person, who possesses a permit to file the return and to make payments on a semiannual basis exceeds \$1,000 in surcharge taxes during the calendar year or exceeds \$2,000 in surcharge taxes during the calendar year if making payments on a quarterly basis, or if the director determines that any such quarterly or semiannual filing of return would unduly jeopardize the proper administration of this chapter, including the assessment or collection of the surcharge tax, the director, at any time, may revoke a person's permit, in which case the person then shall be required to file the person's return and make payments thereon as provided in subsection (a).

(d) Section 232-2 does not apply to a monthly, quarterly, or semiannual return.

§ -5 **Remittances.** All remittances of surcharge taxes imposed under this chapter shall be made by cash, bank draft, cashier's check, money order, or certificate of deposit to the office of the taxation district to which the return was transmitted. The department shall deposit the moneys into the state treasury to the credit of the state highway fund.

§ -6 **Annual return.** On or before the twentieth day of the fourth month following the close of the taxable year, every person who has become liable for the payment of the surcharge taxes under this chapter during the preceding tax year shall file a return summarizing the person's liability under this chapter for

the year, in such form as the director prescribes. The person shall transmit with the return a remittance covering the residue of the surcharge tax chargeable to the person, if any, to the office of the appropriate state district tax assessor designated in section -7. The return shall be signed by the person, if made by an individual, or by the president, vice-president, secretary, or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, firm, society, unincorporated association, group, hui, joint adventure, joint stock company, corporation, trust estate, decedent's estate, trust, or other entity, any individual delegated by the entity shall sign the same on behalf of the person. If for any reason it is not practicable for the individual person to sign the return, it may be done by any duly authorized agent. The department, for good cause shown, may extend the time for making the return on the application of any person and grant such reasonable additional time within which to make the return as the department may deem advisable.

Section 232-2 applies to the annual return, but not to a monthly, quarterly, or semiannual return.

**§ -7 Filing of returns.** All monthly, quarterly, semiannual, and annual returns shall be transmitted to the office of the taxation district in which the person's place of business is situated or to the office of the first taxation district in Honolulu.

**§ -8 Assessment of surcharge tax upon failure to make return; limitation period; exceptions; extension by agreement.** (a) If any person fails to make a return as required by this chapter, the director shall make an estimate of the surcharge tax liability of the person from any information the director obtains, and according to the estimate so made, assess the surcharge taxes, interest, and penalty due the State from the person, give notice of the assessment to the person, and make demand upon the person for payment. The assessment shall be presumed to be correct until and unless, upon an appeal duly taken as provided in section -10, the contrary shall be clearly proved by the person assessed, and the burden of proof upon the appeal shall be upon the person assessed to disprove the correctness of assessment.

(b) After a return is filed under this chapter the director shall cause the return to be examined, and may make such further audits or investigation as the director considers necessary. If the director determines that there is a deficiency with respect to the payment of any surcharge tax due under this chapter, the director shall assess the surcharge taxes, interest, and penalty due the State, give notice of the assessment to the persons liable, and make demand upon the persons for payment.

(c) Except as otherwise provided by this section, the amount of surcharge taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later, and no proceeding in court without assessment for the collection of any such surcharge taxes shall begin after the expiration of the period.

(d) In the case of a false or fraudulent return with intent to evade the surcharge tax, or of a failure to file the annual return, the surcharge tax may be assessed or levied at any time; however, in the case of a return claimed to be false or fraudulent with intent to evade the surcharge tax, the determination as to the claim shall first be made by a judge of the circuit court as provided in section 235-111(b), which shall apply to the surcharge tax imposed by this chapter.

(e) Where, before the expiration of the period prescribed in subsection (c), both the department of taxation and the person have consented in writing to the assessment or levy of the surcharge tax after the date fixed by subsection (c), the surcharge tax may be assessed or levied at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

§ **-9 Overpayment; refunds.** Upon application by a person, if the director determines that any surcharge tax, interest, or penalty has been paid more than once, or has been erroneously or illegally collected or computed, the surcharge tax, interest, or penalty shall be credited by the director on any surcharge taxes then due from the person under this chapter. The director shall refund the balance to the person or the person's successors, administrators, executors, or assigns in accordance with section 231-23(d). No credit or refund shall be allowed for any surcharge tax imposed by this chapter, unless a claim for the credit or refund shall be filed within three years after the annual return was filed, or in any case of payment of surcharge tax without the filing of an annual return, within three years after payment of surcharge tax, or within three years of the date prescribed for the filing of the annual return, whichever is later. The preceding limitation shall not apply to a credit or refund pursuant to an appeal, provided for in section -10.

§ **-10 Appeals.** Any person aggrieved by any assessment of the surcharge tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided the surcharge tax so assessed shall have been paid.

§ **-11 Records to be kept; examination; penalties.** Every person shall keep in the English language within the state, and preserve for a period of three years, suitable records relating to the surcharge tax levied and assessed under this chapter, and such other books, records of account, and invoices as may be required by the department of taxation, and all such books, operators records, and invoices shall be open for examination at any time by the department or the Multistate Tax Commission pursuant to chapter 255, or the authorized representative thereof. Any person violating this section shall be guilty of a misdemeanor; and any officer or director of a corporation who permits, aids, or abets the corporation to violate this section likewise shall be guilty of a misdemeanor. The penalty for the misdemeanor shall be that prescribed by section 231-34 for violation of that section.

§ **-12 Disclosure of returns unlawful; destruction of returns.** (a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to willfully permit any such tax return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for surcharge tax purposes only the lessor or tour vehicle operator, the lessor's or tour vehicle operator's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law,

persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in case of the estate's or decedent's return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7);
- (9) Persons duly authorized by the State in connection with their official duties;
- (10) Any duly accredited tax official of the United States or of any state or territory; and
- (11) The Multistate Tax Commission or its authorized representative.

Any violation of this subsection shall be a misdemeanor. Nothing in this subsection shall prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items of the reports or returns.

(b) The department may destroy the monthly, quarterly, or semiannual returns filed pursuant to section -4, or any of them, upon the expiration of three years after the end of the calendar or fiscal year in which the surcharge taxes so returned accrued.

**§ -13 Collection by suit; injunction.** The department may collect surcharge 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 surcharge taxes arose. 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 certificate 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 certificate, the department may proceed in the circuit court of the judicial circuit in which the rental motor vehicles were leased or the tour vehicles were hired, to obtain an injunction restraining the further furnishing of services until full payment shall have been made of all surcharge taxes, penalties, and interest due under this chapter, or until the certificate is secured, or both, as the circumstances of the case may require.

**§ -14 Application of surcharge tax.** The surcharge tax imposed by this chapter shall be in addition to any other taxes imposed by any other laws of the State, except as otherwise specifically provided in this chapter; provided that if it be held by any court of competent jurisdiction that the surcharge tax imposed by this chapter may not legally be imposed in addition to any other tax or taxes imposed by any other law or laws with respect to the same property or the use thereof, then this chapter shall be deemed not to apply to such property and the use thereof under the specific circumstances, but the other laws shall be given full effect with respect to such property and use.

§ -15 Administration and enforcement; rules. (a) The director shall administer and enforce this chapter in respect of:

- (1) The examination of books and records and of lessors, tour vehicle operators, and other persons;
- (2) Procedure and powers upon failure or refusal by a person to make a return or proper return; and
- (3) The general administration of this chapter.

All of the provisions of chapter 237 not inconsistent with this chapter and which may appropriately be applied to the taxes, persons, circumstances, and situations involved in this chapter, including (without prejudice to the generality of the foregoing) provisions as to penalties and interest, and provisions granting administrative powers to the department, and provisions for the assessment, levy, and collection of taxes, shall be applicable to the surcharge taxes imposed by this chapter, and to the assessment, levy, and collection thereof.

(b) The director may adopt, amend, or repeal rules under chapter 91 to carry out this chapter.

§ -16 Evasion of surcharge tax, etc.; penalties. (a) It shall be unlawful for any person to refuse to make the return required to be made in section -6; or to make any false or fraudulent return or false statement in any return, with intent to defraud the State or to evade the payment of surcharge tax imposed by this chapter; or for any person to aid or abet another in any attempt to evade the payment of any surcharge tax imposed by this chapter; or for the president, vice-president, secretary, or treasurer of any corporation to make or permit to be made for any corporation or association any false return, or any false statement in any return required by this chapter, with the intent to evade the payment of any surcharge tax under this chapter. Any person violating this section or violating any of the provisions of section 231-34 in relation to the surcharge tax imposed by this chapter, shall be punished as provided in section 231-34. Any corporation for which a false return, or a return containing a false statement shall be made, shall be fined in the amount provided in section 231-34.

(b) Any person entering into an agreement, where the agreement is based on a time period or other provision in the agreement, with the intention of avoiding the surcharge tax imposed under this chapter shall be guilty of a misdemeanor.”

SECTION 2. Section 231-1, Hawaii Revised Statutes, is amended to read as follows:

“§231-1 Definitions. Whenever used in chapters 231 to 249, 236D [and], 237D, 244D[:], and \_\_\_\_\_:

“Assessor” or “assistant assessor” means the assessor or an assistant assessor appointed for the taxation district concerned. Whenever there is more than one assessor for the first district, with respect to that district “assessor” or “assistant assessor” means the assessor or assistant assessor for a particular tax.

“Comptroller” means the comptroller of the State.

“Department” means the department of taxation, unless the context clearly indicates otherwise.

“Property” or “real property” has the meaning defined herein, and, to the extent required by provisions making applicable to other chapters, this chapter, or chapters 232, 233, 235 to 239, 241 to 245, 236D, 237D, [and] 244D, and \_\_\_\_\_, also means and includes other subjects or measures of tax. “Real property” includes all land and appurtenances thereof and the buildings, structures, fences,

and improvements erected on or affixed to the land, and any fixture which is erected on or affixed to such land, buildings, structures, fences, and improvements, including all machinery and other mechanical or other allied equipment and the foundations thereof, whose use thereof is necessary to the utility of such land, buildings, structures, fences, and improvements, or whose removal therefrom cannot be accomplished without substantial damage to such land, buildings, structures, fences, and improvements, excluding, however, any growing crops.”

SECTION 3. Section 231-3, Hawaii Revised Statutes, is amended to read as follows:

“**§231-3 Department, general duties and powers.** The department of taxation shall have the following duties and powers, in addition to any others prescribed or granted by this chapter:

- (1) Assessment: To make any assessment by law required to be made by the department;
- (2) Collections: To be responsible for the collection of all taxes imposed by chapters 231 to 249, 236D, 237D, 244D, and [237D,] \_\_\_\_\_, except those which by law are to be collected by county treasurers, and for such other duties as are provided by law;
- (3) Construction of revenue laws: To construe the tax and revenue laws, the administration of which is within the scope of the department’s duties, whenever requested by any officer acting under those laws, or by an interested person;
- (4) Enforcement of penalties: To see that penalties are enforced when prescribed by any tax or revenue law of the State (the administration of which is within the scope of the department’s duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any such law; in the execution of these powers and duties the department may call upon the attorney general or any of the attorney general’s deputies, including the county attorneys or public prosecutors, whose duties it shall be to assist in the institution and conduct of all proceedings or prosecutions for penalties and forfeitures, liabilities, and punishments for violation of the laws administered by the department;
- (5) Forms: To prescribe forms to be used in or in connection with any assessment, including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the assessment, and to change the same from time to time as deemed necessary;
- (6) Inspection, examination of records: To inspect and examine the records of all public officers without charge, and to examine the books and papers of account of any person for the purpose of enabling the department to obtain all information that could in any manner aid the department in discharging its duties under any tax law;
- (7) Recommendations for legislation: To recommend to the governor any amendments, changes, or modifications of the laws as may seem proper or necessary to remedy injustice or irregularity in taxation or to facilitate the assessment of taxes;
- (8) Report to governor: To report to the governor annually, and at such other times and in such manner as the governor may require, concerning the acts and doings and the administration of the



- department, and any other matters of information concerning taxation as may be deemed of general interest;
- (9) Rules: To adopt such rules as the department may deem proper effectually to carry out the purposes for which the department is constituted and to regulate matters of procedure by or before the department;
  - (10) Compromises: With the approval of the governor, to compromise any claim arising under any tax law the administration of which is within the scope of the department's duties; and in each case there shall be placed on file in the department's office a statement of (A) the name of the taxpayer and the amount and type of tax assessed, or proposed to be assessed, (B) the amount of penalties and interest imposed or which could have been imposed by law with respect to the amount of tax assessed, as computed by the department, (C) the total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof, and (D) the reasons for the compromise; and notwithstanding the provisions of any law making unlawful the disclosure of tax returns or return information, statements on file in respect of compromises shall be open to public inspection;
  - (11) Retroactivity of rulings: To prescribe the extent, if any, to which any ruling, rule, or construction of the tax laws, of general application, shall be applied without retroactive effect;
  - (12) Remission of delinquency penalties and interest: Except in cases of fraud or wilful violation of the laws or wilful refusal to make a return setting forth the information required by law (but inclusion in a return of a claim of nonliability for the tax shall not be deemed a refusal to make a return), the department may remit any amount of penalties or interest added, under any law administered by the department, to any tax that is delinquent for not more than ninety days, in a case of excusable failure to file a return or pay a tax within the time required by law, or in a case of uncollectibility of the whole amount due; and in that case there shall be placed on file in the department's office a statement showing the name of the person receiving the remission, the principal amount of the tax, and the year or period involved;
  - (13) Closing agreements: To enter into an agreement in writing with any taxpayer or other person relating to the liability of such taxpayer or other person, under any law the administration of which is within the scope of the department's duties, in respect of any taxable period, or in respect of one or more separate items affecting the liability for any taxable period; the agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the department, shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, (A) the matters agreed upon shall not be reopened, and the agreement shall not be modified, by any officer or employee of the State, and (B) in any suit, action, or proceeding, the agreement, or any determination, assessment, collection, payment, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded;
  - (14) Other powers and duties: In addition to the powers and duties contained in this chapter, the powers and duties contained in chapters

235, 237 to 239, 243 to 245, 236D, 237D, 244D, and [237D,] \_\_\_\_\_, for levying, assessing, collecting, receiving, and enforcing payments of the tax imposed thereunder, and otherwise relating thereto, shall be severally and respectively conferred, granted, practiced, and exercised for levying, assessing, collecting, receiving, and enforcing payment of the taxes imposed under the authority of those chapters as far as the provisions are consistent with the express provisions of those chapters, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated in those chapters, with reference to those taxes, and all of the provisions shall be applied, construed, deemed, and taken to refer to the taxes imposed under the authority of those chapters, in like manner.”

SECTION 4. Section 231-6, Hawaii Revised Statutes, is amended to read as follows:

“**§231-6 Oath, power to administer.** The department of taxation may administer all oaths or affirmations required to be taken or be administered under chapters 231 to 249, 236D, 237D, 244D, and [237D,] \_\_\_\_\_, with respect to any matters coming within the scope of the duties of the department.”

SECTION 5. Section 231-12, Hawaii Revised Statutes, is amended to read as follows:

“**§231-12 District judges; jurisdiction over misdemeanors and actions for tax collections.** Except as otherwise specifically provided by chapters 231 to 249, 236D, 237D, 244D, and [237D,] \_\_\_\_\_, the several district judges shall have jurisdiction to try misdemeanors arising under such chapters and all complaints for the violation of such chapters and to impose any of the penalties therein prescribed, and shall also have jurisdiction to hear and determine all civil actions and proceedings for the collection and enforcement of collection and payment of all taxes assessed thereunder, and all actions or judgments obtained in tax actions and proceedings, notwithstanding the amount claimed.”

SECTION 6. Section 231-15.6, Hawaii Revised Statutes, is amended to read as follows:

“**[§231-15.6] Returns of corporations or partnerships.** The returns, statements, or answers required by chapter 234, 235, 236D, 237, 237D, 238 to 243, 244D, 245, [or] 247, or \_\_\_\_\_, in the case of a corporation, shall be made by any officer of the corporation, or in the case of a partnership, by any one of the partners.”

SECTION 7. Section 231-15.7, Hawaii Revised Statutes, is amended to read as follows:

“**[§231-15.7] Returns by fiduciaries.** The returns, statements, or answers required by chapter 234, 235, 236D, 237, 237D, 238 to 243, 244D, 245, [or] 247, or \_\_\_\_\_, shall be made by the personal representative, trustee, guardian, or other fiduciary in such capacity in any taxation district in which returns are required.”

SECTION 8. Section 231-23, Hawaii Revised Statutes, is amended by

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amending subsection (c) to read as follows:

“(c) This subsection shall apply to all taxes.

- (1) All refunds shall be paid only upon a form to be known as a “refund voucher” prepared by the collector. The refund vouchers shall set forth all the details of each transaction, shall be approved by the director, and shall be forwarded to the comptroller from time to time. The comptroller shall issue a warrant, in the form prescribed by section 40-52, for the payment of any such refund out of the tax reserve fund hereinafter created; provided that if the person entitled to the refund is delinquent in the payment of any tax, the comptroller, upon demand of the collector and after notice to the delinquent taxpayer, shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the refund and pay the same to the collector.
- (2) There is hereby appropriated, from the general revenues of the State not otherwise appropriated, the sum of \$25,000 which shall be set aside as a special fund to be known as the tax reserve fund. All refunds of taxes collected under chapters 235 to 239, 241, 243 to 245, 236D, 237D, 244D, and [237D,] \_\_\_\_\_, heretofore made out of the reserve funds in chapters 235 and 237 or from the general fund, shall be made out of the tax reserve fund. The director of taxation, from time to time, may deposit taxes collected under the chapters enumerated in the immediately preceding sentence in the state treasury to the credit of the tax reserve fund so that there may be maintained at all times a fund not exceeding \$25,000. The amounts deposited shall be made from the taxes with respect to which a particular refund is made.”

SECTION 9. Section 231-29, Hawaii Revised Statutes, is amended to read as follows:

“§231-29 Joinder of party defendant when State claims tax liens. The director of taxation (or in the case of a lien under chapter 383, the director of labor and industrial relations) may be named a party defendant in any civil action in any state court of competent jurisdiction or in the district court of the United States for the district of Hawaii, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the State has or claims a tax lien under chapters 233, 235, 236D, 237 to 239, 237D, 241, 243, 244D, 245, [237D,] \_\_\_\_\_, and 383; provided that the jurisdiction herein conferred shall be limited and shall not operate as a consent by the State to be sued as to its claim of title to or liens and encumbrances on real and personal property other than the liens aforementioned.

Service upon the director shall be made as provided by the rules of court. In any action herein contemplated, the director may ask, by way of affirmative relief, for the foreclosure of the aforementioned state tax liens, but in the absence of such request for affirmative relief, upon any foreclosure sale the property shall be sold subject to the tax liens. Nothing in this section shall preclude the director from asking for such other and further relief as might have been claimed by intervention in the action.”

SECTION 10. Section 237-24.7, Hawaii Revised Statutes, is amended to read as follows:

“§237-24.7 **Additional amounts not taxable.** In addition to the amounts not taxable under section 237-24, this chapter shall not apply to [amounts];

- (1) Amounts received by the operator of a hotel from the owner of the hotel in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this section:

“Employee” means employees directly engaged in the day to day operation of the hotel and employed by the operator.

“Hotel” means an operation licensed under section 445-92.

“Owner” means the fee owner or lessee under a recorded lease of a hotel.

“Operator” means any person who, pursuant to a written contract with the owner of a hotel, operates or manages the hotel for the owner.

- (2) Surcharge taxes on rental motor vehicles imposed by chapter and passed on and collected by persons holding certificates of registration under that chapter.”

SECTION 11. Section 243-4, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Every distributor shall, in addition to any other taxes provided by law, pay a license tax to the department of taxation for each gallon of liquid fuel refined, manufactured, produced, or compounded by the distributor and sold or used by the distributor in the State or imported by the distributor, or acquired by the distributor from persons not licensed distributors, and sold or used by the distributor in the State. Any person who sells or uses any liquid fuel knowing that the distributor from whom it was originally purchased has not paid and is not paying the tax thereon shall pay such tax as would have applied to such sale or use by the distributor. The rates of tax hereby imposed are as follows:

- (1) For each gallon of diesel oil, 1 cent.
- (2) For each gallon of gasoline or other aviation fuel sold for use in or used for airplanes, 1 cent.
- (3) For each gallon of liquid fuel other than fuel mentioned in paragraphs (1) and (2), sold or used in the city and county of Honolulu, or sold in any county for ultimate use in the city and county of Honolulu, [11] 16 cents state tax, and in addition thereto such amount, to be known as the “city and county of Honolulu fuel tax”, as shall be levied pursuant to section 243-5.
- (4) For each gallon of liquid fuel other than fuel mentioned in paragraphs (1) and (2), sold or used in the county of Hawaii, or sold in any county for ultimate use in the county of Hawaii, [11] 16 cents state tax, and in addition thereto such amount, to be known as the “county of Hawaii fuel tax”, as shall be levied pursuant to section 243-5.
- (5) For each gallon of liquid fuel other than fuel mentioned in paragraphs (1) and (2), sold or used in the county of Maui, or sold in any county for ultimate use in the county of Maui, [11] 16 cents state tax, and in addition thereto such amount, to be known as the “county of Maui fuel tax”, as shall be levied pursuant to section 243-5.

- (6) For each gallon of liquid fuel other than fuel mentioned in paragraphs (1) and (2), sold or used in the county of Kauai, or sold in any county for ultimate use in the county of Kauai, [11] 16 cents state tax, and in addition thereto such amount, to be known as the "county of Kauai fuel tax", as shall be levied pursuant to section 243-5.

If it is shown to the satisfaction of the department, based upon proper records and from such other evidence as the department may require, that liquid fuel other than fuel mentioned in paragraphs (1) and (2) is used for agricultural equipment that does not operate upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by this section in excess of 1 cent per gallon. The department shall prescribe rules to administer [for] such refunds.

(b) Every distributor of diesel oil shall, in addition to the tax required by subsection (a) [of this section], pay a license tax to the department for each gallon of such diesel oil sold or used by the distributor for operating a motor vehicle or motor vehicles upon public highways of the State. The rates of the additional tax hereby imposed are as follows:

- (1) For each gallon of diesel oil [so] sold or used in the city and county of Honolulu, or sold in any other county for ultimate use in the city and county of Honolulu, [or used in the city and county of Honolulu, 10] 15 cents state tax, and in addition thereto such amount, to be known as the "city and county of Honolulu fuel tax", as shall be levied pursuant to section 243-5.
- (2) For each gallon of diesel oil [so] sold or used in the county of Hawaii, or sold in any other county for ultimate use in the county of Hawaii, [or used in the county of Hawaii, 10] 15 cents state tax, and in addition thereto such amount, to be known as the "county of Hawaii fuel tax", as shall be levied pursuant to section 243-5.
- (3) For each gallon of diesel oil [so] sold or used in the county of Maui, or sold in any other county for ultimate use in the county of Maui, [or used in the county of Maui, 10] 15 cents state tax, and in addition thereto such amount, to be known as the "county of Maui fuel tax", as shall be levied pursuant to section 243-5.
- (4) For each gallon of diesel oil [so] sold or used in the county of Kauai, or sold in any other county for ultimate use in the county of Kauai, [or used in the county of Kauai, 10] 15 cents state tax, and in addition thereto such amount, to be known as the "county of Kauai fuel tax", as shall be levied pursuant to section 243-5.

If any user of diesel oil furnishes a certificate, in such form as the department shall prescribe, to the distributor, or the distributor who uses diesel oil signs such certificate, certifying that the diesel oil is for use in operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the tax as provided in paragraphs (1) to (4) shall not be applicable. In the event a certificate is not or cannot be furnished and the diesel oil is in fact for use for operating a motor vehicle or motor vehicles in areas other than upon public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by the foregoing paragraphs. The department shall prescribe rules to administer the refunding of such taxes."

SECTION 12. Section 249-31, Hawaii Revised Statutes, is amended to read as follows:

“§249-31 State registration fee. All vehicles and motor vehicles in the State as defined in section 249-1, including antique motor vehicles, except as otherwise provided in sections 249-3 to 249-6 shall be subject to a [\$10] \$20 annual vehicle registration fee. The fee shall become due and payable on January 1, and shall be paid before April 1 in each year together with all other taxes and fees levied by this chapter; provided that should any county elect to renew motor vehicle registrations on a staggered basis as authorized by section 286-51, the state registration for that county shall likewise be staggered so that the state registration fee is due and payable at the same time and shall be collected together with the county fee. The state registration fee shall be deemed delinquent if not paid with the county registration fee. The respective counties shall collect this fee together with the vehicle registration tax collected for the county and shall transfer the moneys collected under this section to the State to be paid into the state highway fund.”

SECTION 13. Section 249-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All vehicles and motor vehicles in the State as defined in section 249-1, including antique motor vehicles, except as otherwise provided in section 249-3 to 249-6, in addition to all other fees and taxes levied by this chapter, shall be subject to an annual state vehicle weight tax. The tax shall be levied by the county director of finance at the rate of [.50] .75 cents a pound according to the net weight of each vehicle as the “net weight” is defined in section 249-1 up to and including [4,000] four thousand pounds net weight; vehicles over [4,000] four thousand pounds and up to and including [7,000] seven thousand pounds net weight shall be taxed at the rate of [.55] 1.00 [cents] cent a pound; vehicles over [7,000] seven thousand pounds and up to and including [10,000] ten thousand pounds net weight shall be taxed at the rate of [.60] 1.25 cents a pound; vehicles over [10,000] ten thousand pounds net weight shall be taxed at a flat rate of [\$65.] \$150.”

SECTION 14. Section 249-33, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If it is shown to the satisfaction of the department of transportation of the State, based upon proper records and from such other evidence as the department of transportation may require, that any vehicle with a net vehicle weight of [6,000] six thousand pounds or over is used for agricultural purposes the owner thereof may obtain a refund of all taxes thereon imposed by this section. The department of transportation shall prescribe rules to administer such refunds.”

SECTION 15. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 16. This Act shall take effect on January 1, 1992; provided that sections 12, 13, and 14 of this Act shall take effect on October 1, 1991; and provided further that section 11 of this Act shall take effect on July 1, 1991.

(Approved June 14, 1991.)