

ACT 286

S.B. NO. 1914

A Bill for an Act Relating to Insurance Taxation.

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

SECTION 1. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§237- Exemption of insurance companies. This chapter shall not apply to the gross income or gross proceeds of insurance companies authorized to do business under chapter 431; except this exemption shall not apply to any gross income or gross proceeds received after December 31, 1991, as rents from investments in real property in this State; provided that gross income or gross proceeds from investments in real property received by insurance companies after December 31, 1991, under written contracts entered into before the effective date of this Act that do not provide for the passing on of taxes or tax increases shall not be taxed until the contracts are renegotiated, renewed, or extended.”

SECTION 2. Section 237-4, Hawaii Revised Statutes, is amended to read as follows:

“§237-4 “Wholesaler”, “jobber”, defined. “Wholesaler” or “jobber” applies only to a person making sales at wholesale. Only the following are sales at wholesale:

- (1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;
- (2) Sales to a licensed manufacturer of material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and which will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;
- (3) Sales to a licensed producer or cooperative association of materials or commodities which are to be incorporated by the producer or by the cooperative association into a finished or saleable product which is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities which are sold by the producer or by the cooperative association;
- (4) Sales to a licensed contractor, of material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses;
- (5) Sales to a licensed producer, or to a cooperative association described in section [237-23(a)(9)] 237-23(a)(8) for sale to such producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer’s own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator’s service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section [237-23(a)(9)] 237-23(a)(8) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;
- (6) Sales to a licensed producer, or to a cooperative association described in section [237-23(a)(9)] 237-23(a)(8) for sale to the producer, of seed for producing agricultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);

- (7) Sales to a licensed producer, or to a cooperative association described in section [237-23(a)(9)] 237-23(a)(8) for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural products; of seedlings and cuttings for producing nursery plants; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);
- (8) Sales of tangible personal property to a licensed person engaged in the service business; provided that (A) the property is not consumed or incidental to the performance of the services; (B) there is a resale of the article at the retail rate of four per cent; and (C) the resale of the article is separately charged or billed by the person rendering the services;
- (9) Sales to a licensed leasing company of capital goods which are thereafter leased as a service to others. Capital goods means goods which have a depreciable life and which are purchased by the leasing company for lease to its customers.

If the use tax law is finally held by a court of competent jurisdiction to be unconstitutional or invalid insofar as it purports to tax the use or consumption of tangible personal property imported into the State in interstate or foreign commerce or both, wholesalers and jobbers shall be taxed thereafter under this chapter in accordance with the following definition (which shall supersede the preceding paragraph otherwise defining "wholesaler" or "jobber"): "Wholesaler" or "jobber" means a person, or a definitely organized division thereof, definitely organized to render and rendering a general distribution service which buys and maintains at the person's place of business a stock or lines of merchandise which the person distributes; and which, through salesmen, advertising, or sales promotion devices, sells to licensed retailers, to institutional or licensed commercial or industrial users, in wholesale quantities and at wholesale rates. A corporation deemed not to be carrying on a trade or business in this State under section 235-6 shall nevertheless be deemed to be a wholesaler and shall be subject to the tax imposed by this chapter."

SECTION 3. Section 237-23, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) This chapter shall not apply to the following persons:

- (1) Banks taxable under chapter 241;
- (2) Public service companies (as that term is defined in section 239-2), with respect to the gross income, either actual gross income or gross income estimated and adjusted, which is included in the measure of the tax imposed by chapter 239;
- (3) Public utilities owned and operated by the State or any county or other political subdivision thereof;
- [4) Insurance companies which pay the State a tax upon their gross premiums under chapter 431;
- (5)] (4) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services,

- or other benefits to the members of such societies, orders, or associations, and to their dependents;
- [(6)] (5) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended by the Housing Act of 1961, the Senior Citizens Housing Act of 1962, the Housing Act of 1964, and the Housing and Urban Development Act of 1965, as well as that of operating a prepaid legal services plan;
- [(7)] (6) Business leagues, chambers of commerce, boards of trade, civic leagues, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare which shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;
- [(8)] (7) Hospitals, infirmaries, and sanitarium;
- [(9)] (8) Cooperative associations incorporated under chapter 421 or 422 or Code section 521 cooperatives which fully meet the requirements of section 421-23 or 422-33, except Code section 521 cooperatives need not be organized in Hawaii; provided that:
- (A) The exemption shall apply only to the gross income derived from activities which are pursuant to purposes and powers authorized by chapter 421 or 422, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;
- (B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all such persons shall be so taxable; and
- (C) As used in this paragraph, "section 521 cooperatives" mean associations which qualify as a cooperative under section 521 (with respect to exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;
- [(10)] (9) Building and loan associations taxable under chapter 241;
- [(11)] (10) Persons affected with Hansen's disease and kokuas, with respect to business within the county of Kalawao;
- [(12)] (11) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual (provided that the exemption shall apply only to the activities of such persons in the conduct of cemeteries 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 the furtherance of the exempt activities of such persons);
- [(13)] (12) Financial services loan companies taxable under chapter 241; provided that the exemption shall apply only to the gross income derived from the "engaging in the business of a financial services loan company" as defined in section 408-2;

- [(14)] (13) Development companies taxable under chapter 241; provided that the exemption shall apply only to gross income derived from interest on loans made to borrowers as provided by Title V of the federal Small Business Investment Act of 1958, Public Law 699, as amended;
- [(15)] (14) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations;
- [(16)] (15) Small business investment companies taxable under chapter 241; provided that the exemption shall apply only to the gross income derived from activities engaged in as provided by the federal Small Business Investment Act of 1958, Public Law 699, as amended; provided further that the exemption shall not apply to gross income derived from consulting and advisory services engaged in under the first sentence of section 308(b) of Public Law 699; and
- [(17)] (16) Financial corporations taxable under chapter 241; provided that the exemption shall apply only to interest, discount, points, loan fees, loan origination charges, and finance charges which are part of the computed annual percentage rate of interest and which are contracted and received for the use of money; provided further that in the case of financial corporations acting as interbank brokers taxable under chapter 241, the exemption shall apply only to gross income derived from brokerage services. As used in this paragraph, "finance charge" and "annual percentage rate" have the same meaning as defined in the federal Truth in Lending Act (15 U.S.C. 1601 et seq.).

(b) The exemptions enumerated in subsection [(a)(5) to (8)] (a)(4) to (7) shall apply only:

- (1) To those persons who shall have registered with the department of taxation by filing a written application for registration in such form as the department shall prescribe, shall have paid the registration fee of \$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 sanatoria 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."

SECTION 4. Section 431:7-204, Hawaii Revised Statutes, is amended to read as follows:

"§431:7-204 In lieu provision. As to insurers, the taxes and fees imposed by section 431:7-201 to section 431:7-204, and the fees imposed by this code, when paid shall be in settlement of and in lieu of all demands for taxes, licenses, or fees of every character imposed by the laws of this State, the ordinances or other laws, rules, or regulations of any county[, city and county, or any municipality] of this State, except [as]:

- (1) As expressly otherwise provided[, and excepting also taxes];
- (2) Taxes on real property[, and taxes];
- (3) Taxes on the purchase, use, or ownership of tangible personal property[.]; and
- (4) Taxes on gross income, gross proceeds, gross rental, or gross rental proceeds under chapter 237 or 237D.

Nothing [herein] in this section shall be deemed to exempt insurers from liability for withholding taxes payable by their employees and paying the same to the proper collection officers, or from keeping such records, and making such returns and reports, as may be required in the case of other persons enjoying tax exemption.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on January 1, 1992.

(Approved June 18, 1991.)

Note

1. Edited pursuant to HRS §23G-16.5.