

ACT 55

S.B. NO. 1223

A Bill for an Act Relating to the Fuel Tax.

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

SECTION 1. Section 243-1, Hawaii Revised Statutes, is amended by amending the definition of “person” to read as follows:

““Person”, except where the context or sense otherwise requires, means and includes individuals, firms, associations, [or] corporations[.], trusts, estates,

or partnerships.”

SECTION 2. Section 243-10, Hawaii Revised Statutes, is amended to read as follows:

“§243-10 **Statements and payments.** Each distributor and each person subject to section 243-4(b) [shall], on or before the last day of each calendar month, shall file with the director of taxation, on forms prescribed, prepared, and furnished by the director, a statement, authenticated as provided in section 231-15, showing separately for each county and for the [islands] island of Lanai and the island of Molokai within which and whereon fuel is sold or used during each preceding month of the calendar year, the following:

- (1) The total number of gallons of fuel refined, manufactured, or compounded by the distributor or person within the State and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;
- (2) The total number of gallons of fuel imported by the distributor or person [or] and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;
- (3) The total number of gallons of fuel acquired by the distributor or person during the month from persons not subject to the tax on the transaction or only subject to tax thereon at the rate of 1 cent per gallon, as the case may be, and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;
- (4) The total number of gallons of [such] fuel sold by the distributor or person to the United States or any department or agency thereof, or to any other person or entity, or used in any manner, the effect of which sale or use is to exempt the fuel from the tax imposed by this chapter;

[The statement shall further show:]

- (5) The total number of gallons of fuel on hand in the distributor’s or person’s possession in all of the counties and on the island of Lanai and on the island of Molokai at the beginning of the month, the total number of gallons thereof refined, manufactured, produced, compounded by the distributor or person, or acquired from persons not subject to the tax on such transaction, or only subject to tax thereon at the rate of 1 cent per gallon, as the case may be, or imported during the month, and the total number of gallons thereof on hand in the distributor’s or person’s possession at the end of the month; and
- (6) [Such additional] Additional information relative to the acquisition, purchase, manufacture, or importation into the State, and the sale, use, or other disposition, of diesel oil by [such] the distributor or person during the month, as the department of taxation [shall] by [regulation] rule shall prescribe.

At the time of submitting the foregoing report to the department, each [such] distributor and person shall pay the tax on each gallon of fuel (including diesel oil) sold or used by the distributor or person in each county and on the [islands] island of Lanai and the island of Molokai during the preceding month, as shown by the statement and required by this chapter; provided that the tax shall not apply to any fuel exempted and so long as the same is exempted from the imposition of the tax by the Constitution or laws of the United States; and the

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tax shall be paid only once upon the same fuel; provided further that a licensed distributor shall be entitled, in computing the tax the licensed distributor is required to pay, to deduct from the gallons of fuel reported for the month for each county or for the island of Lanai or the island of Molokai, as the case may be, one gallon for each ninety-nine gallons of like liquid fuel sold by retail dealers in that county or on that island during the month, as shown by certificates furnished by the retail dealers to the distributor and attached to the distributor's report. All [such] taxes payable for any month shall be delinquent after the expiration of the last day of the following month.

Statements filed under this section concerning the number of gallons of fuel refined, manufactured, compounded, imported, sold or used by the distributor or person are public records."

SECTION 3. Section 243-13, Hawaii Revised Statutes, is amended to read as follows:

"§243-13 Director empowered to make examinations, penalty, etc. The director of taxation and the director's authorized assistants may subpoena witnesses, compel the production of books, papers, and other records, administer oaths, examine books and records, and hear and take such evidence in relation to any matters within the director's jurisdiction, and upon which it is necessary or proper that the director be informed, under this chapter, as in the director's discretion the director may deem proper. The circuit courts shall have power, upon request of the director or any such assistant, to enforce by proper contempt proceedings the attendance of witnesses and the giving of testimony by them, and the production of books, papers, and records. False swearing under oath as to any material fact at any hearing held under this section shall [constitute perjury.] be subject to chapter 710, part V. If the examination discloses that any reports of distributors or other persons theretofore filed with the director by [such] the distributors or other persons, pursuant to the requirements of this chapter, have shown incorrectly the number of gallons of fuel sold or used, or the tax accruing thereon, so that any additional license [fees] taxes are due and payable under this chapter, the director shall proceed to collect such unpaid license [fees.] taxes."

SECTION 4. Section 243-14, Hawaii Revised Statutes, is amended to read as follows:

"§243-14 Assessments[.]; limitation period; exceptions; extension by agreement. (a) In any case of computation of the tax by the director of taxation, as provided in sections 243-12 and 243-13, the amount of the tax shall be assessed against the person liable therefor, and notice shall be given to the person of the amount of tax so assessed with penalties and interest[, which]. The notice may be given by mail, addressed to the person assessed at the person's last known residence or place of business.

(b) The amount of license taxes imposed by this chapter shall be assessed or levied, or the overpayment, if any, shall be credited within three years after filing of the monthly statement, or within three years of the due date prescribed for the filing of the statement, whichever is later. No proceeding in court without assessment for the collection of the taxes or the enforcement of the liability shall begin after the expiration of the three year period.

(c) In the case of a false or fraudulent statement with intent to evade tax or liability, or of a failure to file a statement, the tax or liability may be assessed or levied at any time; provided that in the case of a statement claimed to be false or

fraudulent with intent to evade tax or liability, the determination as to the claim must first be made by a judge of the circuit court as provided in section 235-111(b) which shall apply to the tax imposed by this chapter.

(d) Where, before the expiration of the time prescribed in this section for the assessment, levy, and collection of the tax or liability, both the department and the taxpayer have consented in writing to its assessment or levy after the expiration date, the tax or liability may be assessed or levied, or the overpayment, if any, may be credited at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by a subsequent agreement in writing made before the expiration of the period previously agreed upon.”

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

SECTION 6. This Act shall take effect on July 1, 1991.

(Approved April 26, 1991.)