

**ACT 220**

S.B. NO. 1729

A Bill for an Act Relating to an Excise Tax.

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

SECTION 1. Section 235-55.9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) For the purposes of this section, the term “qualified medical expenses” is defined to include those medical expenses allowable as deductions for income tax purposes under section 213 (with respect to medical, dental, etc., expenses) of the Internal Revenue Code; provided that the medical expense was subject to the imposition and payment of the general excise tax under chapter 237.

Qualified medical expenses shall not include the following:

- (1) Capital improvements; or
- (2) Prescription drugs or prosthetic devices exempt under section [237-24(23).] 237-24.3(7).

The amount of medical expenses paid during the taxable year shall not be reduced by any insurance reimbursement.”

SECTION 2. Section 237-24, Hawaii Revised Statutes, is amended to read as follows:

“§237-24 Amounts not taxable. This chapter shall not apply to the following amounts:

- (1) Amounts received under life insurance policies and contracts paid by reason of the death of the insured;
- (2) Amounts received (other than amounts paid by reason of death of the insured) under life insurance, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract;
- (3) Amounts received under any accident insurance or health insurance policy or contract or under workers' compensation acts or employers' liability acts, as compensation for personal injuries, death, or sickness, including also the amount of any damages or other compensation received, whether as a result of action or by private agreement between the parties on account of the personal injuries, death, or sickness;
- (4) The value of all property of every kind and sort acquired by gift, bequest, or devise, and the value of all property acquired by descent or inheritance;
- (5) Amounts received by any person as compensatory damages for any tort injury to the person, or to the person's character reputation, or received as compensatory damages for any tort injury to or destruction of property, whether as the result of action or by private agreement between the parties (provided that amounts received as punitive damages for tort injury or breach of contract injury shall be included in gross income);
- (6) Amounts received as salaries or wages for services rendered by an employee to an employer;
- (7) Amounts received as alimony and other similar payments and settlements;
- (8) Amounts collected by distributors as fuel taxes on “liquid fuel” imposed by chapter 243, and the amounts collected by such distributors as a fuel tax imposed by any act of the Congress of the United States;
- (9) Taxes on liquor imposed by chapter 244D on dealers holding permits under that chapter;
- (10) The amounts of taxes on cigarettes and tobacco products imposed by chapter 245 on wholesalers or dealers holding licenses under that chapter and selling the products at wholesale[, and the amount of taxes on tobacco products collected from a wholesaler by another where the wholesaler makes separate charges for the amounts so collected from the wholesaler and collects the same from those purchasing from the wholesaler as provided by chapter 245];
- (11) Federal excise taxes imposed on articles sold at retail and collected from the purchasers thereof and paid to the federal government by the retailer;

- (12) The amounts of federal taxes under chapter 37 of the Internal Revenue Code, or similar federal taxes, imposed on sugar manufactured in the State, paid by the manufacturer to the federal government;
- (13) An amount up to, but not in excess of, \$2,000 a year of gross income received by any blind, deaf, or totally disabled person engaging, or continuing, in any business, trade, activity, occupation, or calling within the State;
- (14) Amounts received by a producer of sugarcane from the manufacturer to whom the producer sells the sugarcane, where:
  - (A) [the] The producer is an independent cane farmer, so classed by the secretary of agriculture under the Sugar Act of 1948 (61 Stat. 922, Chapter 519) as the Act may be amended or supplemented[, and];
  - (B) [the] The value of the sugar, and other products manufactured from the sugarcane, is included in the measure of the tax levied on the manufacturer under section 237-13(1)[, and];
  - (C) [the] The producer's gross proceeds of sales are dependent upon the actual value of the products manufactured therefrom or the average value of all similar products manufactured by the manufacturer[, and]
  - (D) [the] The producer's gross proceeds of sales are reduced by reason of the tax on the value of the manufactured products;
- (15) Money paid by the State or eleemosynary child-placing organizations to foster parents for their care of children in foster homes; and
- (16) Amounts received by a cooperative housing corporation from its shareholders in reimbursement of funds paid by such corporation for lease rental, real property taxes, and other expenses of operating and maintaining the cooperative land and improvements[.]; provided that such a cooperative corporation is a corporation:
  - (A) Having one and only one class of stock outstanding;
  - (B) Each of the stockholders of which is entitled solely by reason of the stockholder's ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building owned or leased by the corporation;
  - (C) No stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation[.];

**§237-24.3 Additional amounts not taxable.** In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- [(17)] (1) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms "agricultural commodity", "producer", and "producer dealer" shall be defined in the same manner as they are defined in section 147-1; provided that agricultural commodities need not have been produced in the State;
- [(18)] (2) Amounts received from sales of:
  - (A) [intoxicating] Intoxicating liquor as defined in chapter 244D[.];
  - (B) Cigarettes and tobacco products as defined in chapter 245[.]; and
  - (C) [agricultural.] Agricultural, meat, or fish products grown, raised, or caught in Hawaii, when such sales are made to any person or common carrier in interstate or foreign commerce, or both,

- whether ocean-going or air, for consumption out-of-state by such person, crew, or passengers on such shipper's vessels or airplanes;
- [(19)] (3) Amounts received by the manager or board of directors of:
- (A) An association of apartment owners of a condominium property regime established in accordance with chapter 514A; or
  - (B) A nonprofit homeowners or community association incorporated in accordance with chapter 415B or any predecessor thereto and existing pursuant to covenants running with the land,
- in reimbursement of sums paid for common expenses;
- [(20)] (4) Amounts received or accrued from:
- (A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;
  - (B) Tugboat services including pilotage fees where such services are performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; and
  - (C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines;
- [(21)] (5) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended;
- [(22)] (6) Amounts received for purchases made with United States Department of Agriculture food coupons under the federal food stamp program, and amounts received for purchases made with United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;
- [(23)] (7) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual. This paragraph shall not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices. As used in this section:

"Prescription drugs" are those drugs defined under section 328-1(4) and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs.

"Prosthetic device" means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and which is sold by such practitioner or which is dispensed and sold by a dealer of prosthetic devices; provided that "prosthetic device" shall not mean

any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;

[(24)] (8) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter; and

[(25)] (9) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership.”

SECTION 3. Section 237-25, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any provision of law to the contrary notwithstanding, there shall be exempted from, and excluded from the measures of, the [taxes] tax imposed by [chapters] chapter 237 [and 245] all sales, and the gross proceeds of all sales, of:

- (1) Intoxicating liquor, as defined in chapter 281, hereafter sold by any person licensed under chapter 281 to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or 244D but not including national banks), or to any organization to which such sale is permitted by the proviso of “Class 3” of section 281-31, located on any army, navy, or air force reservation, but the person making the sale shall nevertheless, within the meaning of chapters 237, 244D, and 281 be deemed to be a licensed seller.
- (2) Tobacco products[,] and cigarettes, as defined in chapter 245, sold by any person licensed under the chapter to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or 245 but not including national banks), but the person making the sale shall nevertheless, within the meaning of chapters 237 and 245, be deemed to be a licensed seller.
- (3) Other tangible personal property hereafter sold by any person licensed under this chapter to the United States (including any agency or instrumentality thereof but not including national banks), but the person making such sale shall nevertheless, within the meaning of this chapter, be deemed a licensed seller.
- (4) When the amount of property sold by a licensee turns upon the amount of the property sold through a vending machine or similar device to the customer using the device, there shall not be deemed to have occurred any sale covered by an exemption under paragraph (1), (2), or (3).”

SECTION 4. Section 237-29.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter all of the value or gross proceeds arising from the manufacture, production, or sale of tangible personal property:

- (1) Shipped by the manufacturer, producer, or seller to a point outside the State where the property is resold or otherwise consumed or used outside the State in the purchaser’s or the taxpayer’s business; or
- (2) The sale of which is exempt under [section 237-24(18).] section 237-24.3(2).”

SECTION 5. Section 238-3, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The tax imposed by this chapter shall not apply to any intoxicating liquor as defined in chapter 244D and cigarettes and tobacco products as defined in chapter 245, imported into the State and sold to any person or common carrier in interstate commerce, whether ocean-going or air, for consumption out-of-state by [such] the person, crew, or passengers on the shipper’s vessels or airplanes.”

SECTION 6. Chapter 245, Hawaii Revised Statutes, is amended by amending the title to read:

**“CIGARETTE TAX AND TOBACCO TAX LAW”**

SECTION 7. Section 245-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size and shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.”

2. By amending the definition of “dealer” to read:

““Dealer” means any person [who comes into the possession of] rendering a distribution service who buys and maintains, at the person’s place of business, a stock of cigarettes or tobacco products[,] which [products] have not been acquired from a wholesaler or dealer licensed under this chapter, and who [sells] distributes or uses such cigarettes or tobacco products.”

3. By amending the definition of “sale” or “sold” to read:

““Sale” or “sold” includes any delivery of cigarettes or tobacco products, whether cash is actually paid therefor or not.”

4. By amending the definition of “tobacco products” to read:

““Tobacco products” means tobacco in any form other than cigarettes, that is prepared or intended for consumption by, or the personal use[,] of, humans, including cigars and [cigarettes and] any substitutes thereof other than cigarettes which bear the semblance thereof, snuff, chewing tobacco, and smoking tobacco.”

5. By amending the definition of “wholesaler” to read:

““Wholesaler” means a person [who sells or otherwise] rendering a distribution service who buys and maintains, at the person’s place of business, a stock of cigarettes or tobacco products that the person uses or distributes [tobacco products] only to retailers, or other wholesalers, or both.”

SECTION 8. Section 245-2, Hawaii Revised Statutes, is amended to read as follows:

ACT 220

“§245-2 License. It shall be unlawful for any person to engage in the business of a wholesaler or dealer [to sell or use tobacco products] in the State without having [first] received first a license therefor issued by the department of taxation under this chapter; provided that this section shall not be construed to supersede any other law relating to licensing of persons in the same business.

[Such] The license shall be issued by the department upon application therefor, in such form and manner as shall be required by [regulation] rule of the department, and the payment of a fee of \$2.50, and shall be renewable annually on July 1 for the twelve months ending the succeeding June 30.

Any person who may [lawfully] be required by the State, and who is required by this chapter, to secure a license as a condition precedent to engaging or continuing to act as a wholesaler or dealer, who acts as [such] a wholesaler or dealer without securing a license in conformity with this chapter, and any officer or agent of any [such] firm who aids or abets the firm to act as wholesaler or dealer without securing a license in conformity with this chapter, shall be guilty of a misdemeanor, punishable as provided in the case of other misdemeanors by section 245-14(b).”

SECTION 9. Section 245-3, Hawaii Revised Statutes, is amended to read as follows:

“§245-3 [Tax;] Taxes; limitations. (a) Every wholesaler or dealer [shall], in addition to any other taxes provided by law, shall pay for the privilege of conducting business and other activities in the State an [excise]:

- (1) Excise tax equal to 3.00 cents for each cigarette sold by the wholesaler or dealer, after June 30, 1993, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; such excise tax to increase to 3.50 cents per cigarette on the first day of the month one hundred eighty days after a United States congressional act is signed into law which requires military installations to purchase cigarettes in Hawaii in a manner similar to that required of alcoholic beverages under 10 United States Code, section 2488 (non-appropriated fund instrumentalities, purchase of alcoholic beverages); and
  - (2) Excise tax[, which is hereby imposed upon the sale or use of tobacco products,] equal to forty per cent of the wholesale price of each article or item of tobacco products sold by the wholesaler or dealer, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer.
- (b) The [tax,] taxes, however, [is] are subject to the following limitations:
- (1) [It] The measure of the taxes shall not [apply to] include any cigarettes or tobacco products exempted, and so long as the same are exempted, from the imposition of [the tax] taxes by the Constitution or laws of the United States[.]; and
  - (2) The [tax] taxes shall be paid only once [upon] in respect of the same cigarettes or tobacco product. This limitation shall not prohibit the imposition of the excise tax on receipts from sales of tobacco products under subsection (a)(2); provided that the amount subject to the tax on each sale shall not include amounts previously taxed under this chapter.”

SECTION 10. Section 245-5, Hawaii Revised Statutes, is amended to read as follows:

“**§245-5 Returns.** Every licensee [shall], on or before the last day of each month, shall file with the department of taxation a return [of] showing the cigarettes and tobacco products sold or used by the licensee during the preceding calendar month and of the [tax payable thereon.] taxes chargeable against the taxpayer in accordance with this chapter. The form of the return shall be prescribed by the department and shall contain such information, including a separate statement of the number and wholesale price of cigarettes, and the wholesale price of tobacco products, sold or used, as it may deem necessary for the proper administration of this chapter.”

SECTION 11. Section 245-6, Hawaii Revised Statutes, is amended to read as follows:

“**§245-6 Payment of taxes; penalties.** At the time of the filing of the return required under section 245-5 and within the time prescribed therefor, each licensee shall pay to the department of taxation the [tax] taxes imposed by this chapter, required to be shown by the return.

Penalties and interest shall be added to and become a part of the [tax,] taxes, when and as provided by section 231-39.”

SECTION 12. Section 245-7, Hawaii Revised Statutes, is amended to read as follows:

“**§245-7 Determination of [tax;] taxes; additional assessments, credits, and refunds.** (a) As soon as practicable after each return shall have been filed, the department of taxation shall cause it to be examined and shall compute and determine the amount of the [tax] taxes payable thereon.

(b) If it should appear upon such examination or thereafter within five years after the filing of the return, or at any time if no return has been filed, as a result of [such] the examination or as a result of any examination of the records of the licensee or of any other inquiry or investigation, that the correct amount of the [tax] taxes is greater than that shown on the return, or that any [tax] taxes imposed by this chapter [has] have not been paid, an assessment of such [tax] taxes may be made, in the manner provided in section 235-108(b). The amount of the [tax] taxes for the period covered by the assessment shall not be reduced below the amount determined by an assessment so made, except upon appeal or in a proceeding brought pursuant to section 40-35.

(c) If the licensee has paid or returned with respect to any month more than the amount determined to be the correct amount of [tax] taxes for [such] the month, the amount of the [tax] taxes so returned and any assessment of [tax] taxes made pursuant to the return may be reduced, and any overpayment of [tax] taxes may be credited upon the [tax] taxes imposed by this chapter, or at the election of the licensee, the licensee not being delinquent in the payment of any taxes owing to the State, may be refunded in the manner provided in section 231-23(d)[,]; provided that no reduction of [tax] taxes may be made when forbidden by subsection (b)[,] or more than five years after the filing of the return.”

SECTION 13. Section 245-8, Hawaii Revised Statutes, is amended to read as follows:

“**§245-8 Records to be kept.** (a) Every wholesaler and dealer shall keep a record of every sale or use of cigarettes and tobacco products by the wholesaler or dealer, the number and wholesale price of cigarettes, and the wholesale price of tobacco products, sold or used, and of the [tax] taxes payable thereon, if any, in



## ACT 220

such form as the department of taxation may prescribe. The records shall be offered for inspection and examination at any time upon demand by the department and shall be preserved for a period of five years, except that the department [may], in writing, may consent to their destruction within [such] the five-year period or may require that they be kept longer. The department [may], by [regulation] rule, may require the licensee to keep such other records as it may deem necessary for the proper enforcement of this chapter.

(b) If any wholesaler or dealer fails to keep records from which a proper determination of the [tax] taxes due under this chapter may be made, the department may fix the amount of the [tax] taxes for any period from the best information obtainable by it and assess the [tax] taxes as [hereinbefore] provided[.] in this chapter.”

SECTION 14. Section 245-9, Hawaii Revised Statutes, is amended to read as follows:

“**§245-9 Inspection.** The department of taxation may examine all records required to be kept under this chapter, and books, papers, and records of any person engaged in the [sale of] business of wholesaling or dealing cigarettes and tobacco products, to verify the accuracy of the payment of the [tax] taxes imposed by this chapter. Every person in possession of [such] any books, papers, and records, and the person’s agents and employees, are [hereby] directed and required to give to the department the means, facilities, and opportunities for [such] the examinations.”

SECTION 15. Section 245-10, Hawaii Revised Statutes, is amended to read as follows:

“**§245-10 Appeals.** Any person aggrieved by any assessment of the [tax] taxes imposed by this chapter 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 that the [tax] taxes so assessed shall have been paid. The hearing and disposition of [such] the appeal, including the distribution of costs and of taxes paid pending the appeal shall be as provided in chapter 232.”

SECTION 16. Section 245-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person who makes any false or fraudulent return or false statement in any return, with intent to defraud the State or to evade the payment of any [tax] taxes or any part thereof imposed by this chapter, or who, in any manner, intentionally deceives or attempts to deceive the director of taxation or the director’s authorized agent in relation to any such [tax,] taxes, shall be punished as provided in section 231-34.”

SECTION 17. Section 245-4, Hawaii Revised Statutes, is repealed.

SECTION 18. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 19. This Act shall take effect on July 1, 1993.

(Approved June 10, 1993.)

**Note**

1. Edited pursuant to HRS §23G-16.5.