

ACT 249

S.B NO. 2486

A Bill for an Act Relating to Taxation.

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

SECTION 1. Chapter 245, Hawaii Revised Statutes, is amended by adding two¹ new parts to be appropriately designated and to read as follows:

“PART . STAMPING OF CIGARETTES

§245-A Payment of tax through use of stamps; exemptions. (a) The tax imposed under section 245-3 upon the sale or use of cigarettes shall be paid by licensees through the use of stamps.

(b) The department may provide by rule that the tax imposed under section 245-3 upon the sale or use of cigarettes may be paid without the use of stamps in connection with a particular type of transaction.

§245-B Affixation; required prior to distribution; method and manner.

(a) Beginning January 1, 2001, a licensee or the authorized agent or designee of a licensee shall affix a stamp to the bottom of each individual package of cigarettes prior to distribution.

(b) Beginning April 1, 2001, no individual package of cigarettes may be sold or offered for sale to the general public unless affixed with the stamp required under this section.

(c) Beginning April 1, 2001, no cigarette package may be placed or stored in a vending machine unless affixed with the stamp required under subsection (a).

(d) The department shall adopt rules describing the method and manner in which stamps are to be affixed to packages of cigarettes.

§245-C Department to furnish stamps; designs, specifications, and denominations; procurement. The department shall furnish stamps for sale to li-

censees. Stamps shall be of such designs, specifications, and denominations as may be prescribed by the department. Purchase by the department of stamps from a vendor shall be exempt from the requirements of chapter 103D.

§245-D Sales through financial institutions. The department may enter into agreements to permit the sale of stamps by designated financial institutions located within the State. A list of financial institutions designated to sell stamps shall be made available at the department.

§245-E Purchase of stamps; when; by licensee or designee. (a) A licensee may apply to the department to purchase stamps beginning December 15, 2000.

(b) A licensee may authorize a designee to order purchases of stamps for the licensee at a location where stamps are sold. Authorization of a designee shall be in writing. The written authorization shall continue in effect until written notice of revocation of the authority is delivered at the sales location in the manner prescribed by rule.

§245-F Price; payment; deferred payment purchases. (a) Stamps shall be sold at their denominated values, plus a stamp fee of 1.7 per cent of the denominated value of each stamp sold, composed of the aggregate of:

- (1) .2 per cent of the denominated value of the stamp to pay for the cost to the State of providing the stamps; and
- (2) 1.5 per cent of the denominated value of the stamp to pay for the cost of enforcing the stamp tax;

provided that the department by rule may modify the stamp fee to reflect actual costs incurred by the State in providing the stamps.

(b) Payment for stamps shall be made at the time of purchase; provided that a licensee may defer payments pursuant to section 245-G.

§245-G Maximum amount of deferred-payment purchases; bond. (a) A licensee may apply to the department to set the maximum amount of deferred-payment purchases of stamps that may remain unpaid by the licensee during the time specified under section 245-H. Upon receipt of the application and any bond required pursuant to subsection (b), the department shall set the amount for deferred-payment purchases.

(b) The department may require that a licensee who submits an application for deferred-payment purchases of stamps post a bond in an amount of up to one hundred per cent of the maximum amount of allowed deferred-payment purchases as a condition of department approval of the application.

§245-H Time for payment of deferred-payment purchases; manner of payment. Amounts owing for stamps purchased on the deferred-payment basis in any calendar month shall be due and payable on or before the last day of the following calendar month. Payment shall be made by a remittance payable to the department.

§245-I Suspension or reduction of privilege to purchase on deferred-payment basis. The department may suspend, without prior notice, the privilege to purchase stamps on the deferred-payment basis or may reduce the amount of deferred-payment purchases allowed the licensee if:

- (1) The licensee fails to promptly pay for stamps when payment is due;
- (2) The bond or bonds required of the licensee are canceled or become void, impaired, or unenforceable for any reason; or

- (3) In the opinion of the department, collection of any amounts unpaid or due from the licensee under this chapter is jeopardized.

§245-J Penalty for failure to make timely payment. A licensee who fails to pay any amount owing for the purchase of stamps within the time required shall pay a penalty of:

- (1) Ten per cent of the amount due in addition to the amount due; and
- (2) Interest at the rate specified in section 231-39 from the date on which the amount became due and payable until the date of payment.

§245-K Monthly report on distributions of cigarettes and tobacco products, and purchases of stamps. (a) On or before the last day of each month, every licensee shall file on forms prescribed by the department:

- (1) A report of the licensee's distributions of cigarettes and purchases of stamps during the preceding month; and
- (2) Any other information that the department may require to carry out this part.

(b) On or before the last day of each month, every licensee shall file on forms prescribed by the department:

- (1) A report of the licensee's distributions of tobacco products and the wholesale costs of tobacco products during the preceding month; and
- (2) Any other information that the department may require to carry out this part.

§245-L Tax refund or credit for cigarettes and tobacco products shipped for sale or use outside the State. (a) The department shall adopt rules to provide a tobacco tax refund or credit to a licensee who has paid a tobacco tax on the distribution of cigarettes or tobacco products that are shipped to a point outside the State for subsequent sale or use outside the State.

(b) This part shall not apply to cigarettes or tobacco products that are distributed in this State to consumers and that are subsequently taken outside the State.

§245-M Unused stamps; cancellation of stamps. The department shall adopt rules for a refund or credit to a licensee in the amount of the denominated values of any unused stamps. The department may provide by rule for the cancellation of stamps.

§245-N Approval of department required for transfer of stamps. Unaffixed stamps shall not be sold, exchanged, or in any manner transferred by a licensee to another person without prior written approval of the department. Any person who violates this section shall be subject to a fine of not less than \$500 and not more than \$1,000 for each violation.

§245-O Unlicensed possession or use of stamps. A person who is not licensed under this chapter and who knowingly possess or uses a stamp shall be guilty of a class B felony.

§245-P Counterfeiting stamps. A person shall be guilty of a class B felony if the person:

- (1) Intentionally or knowingly makes, alters, or reuses a stamp as defined in section 245-1; or
- (2) Knowingly possesses or distributes a stamp that has been falsely made, altered, or reused.

§245-Q Sale or purchase of packages of cigarettes without stamps; fines and penalties. (a) Beginning April 1, 2001, a person shall be guilty of a class C felony if the person:

- (1) Is not a licensee, and knowingly possesses, keeps, stores, acquires, or transports three thousand or more cigarettes that do not have stamps affixed to the cigarette packages as required by this part; or
- (2) Knowingly sells one thousand or more cigarettes that do not have stamps affixed to the cigarette packages as required by this part.

(b) Beginning April 1, 2001, a person shall be guilty of a misdemeanor if the person:

- (1) Is not a licensee, and knowingly possesses, keeps, stores, acquires, or transports one thousand or more cigarettes that do not have stamps affixed to the cigarette packages as required by this part; or
- (2) Knowingly sells less than one thousand cigarettes that do not have stamps affixed to the cigarette packages as required by this part.

(c) In addition to any other authorized disposition, a corporation found in violation of:

- (1) Subsection (a) is subject to a fine in an amount not to exceed \$50,000; and
- (2) Subsection (b) is subject to a fine in an amount not to exceed \$25,000.

§245-R Vending unstamped cigarettes. (a) Beginning April 1, 2001, any person who knowingly places for sale in a cigarette vending machine any cigarettes not contained in cigarette packages to which are affixed stamps as required by this part, shall be guilty of a class C felony.

(b) In addition to any other authorized disposition, a corporation found in violation of subsection (a) may be fined in an amount not to exceed \$50,000.

§245-S Penalty exemptions. (a) Sections 245-Q and 245-R shall not apply to cigarettes that are exempt from taxes as provided by section 245-3(b).

(b) Sections 245-Q and 245-R shall not apply to the resale of tax-exempt cigarettes that were purchased from sales outlets operated under the regulations of the Armed Services of the United States.

§245-T Forfeitures; disposition. Any cigarette, package of cigarettes, or carton of cigarettes unlawfully possessed, kept, stored, acquired, transported, or sold in violation of this part may be ordered forfeited pursuant to chapter 712A.

§245-U Enforcement; injunction; disposition of fines. (a) Enforcement of this part shall be under the jurisdiction of the attorney general.

(b) Notwithstanding the existence of other remedies at law, the attorney general may apply for a temporary or permanent injunction restraining any person from violating or continuing to violate this part. The injunction shall be issued without bond.

(c) Where the attorney general initiates and conducts an investigation resulting in the imposition and collection of a criminal fine pursuant to this part, one hundred per cent of the fine shall be distributed to the attorney general; provided that if the attorney general engages the prosecuting attorney for the investigation or prosecution, or both, resulting in the imposition and collection of a criminal fine under this part, the fine shall be shared equally between the attorney general and the prosecuting attorney.

§245-V Rules. The department shall adopt rules pursuant to chapter 91 to implement this part.”

SECTION 2. Chapter 245, Hawaii Revised Statutes, is amended by designating sections 245-1 to 245-15 as part I and inserting a title before section 245-1 to read as follows:

“PART I. GENERAL PROVISIONS”

SECTION 3. Section 245-1, Hawaii Revised Statutes, is amended by adding twelve new definitions to be appropriately inserted and to read as follows:

““Attorney general” means the state attorney general or deputy attorneys general.

“Cigarette package” means a sealed package of cigarettes originating from the manufacturer and bearing the health warning required by law.

“Department” means the department of taxation.

“Falsely alter” means to change a stamp in any manner so that the altered stamp falsely appears or purports to have a value or validity that is not authorized or consented to by the department.

“Falsely make” means to print, manufacture, or make what purports to be a stamp without the authority or consent of the department.

“Falsely reuse” means to affix a stamp that was previously affixed to a package of cigarettes, to another package of cigarettes.

“License” means a license granted under this chapter, that authorizes the holder to engage in the business of a wholesaler or dealer of cigarettes or tobacco products in the State.

“Licensee” means the holder of a license granted under this chapter.

“Prosecuting attorney” means the prosecuting attorney or the deputy prosecuting attorneys of each of the respective counties.

“Sale” includes every act of selling.

“Sell” means to:

- (1) Solicit and receive an order for;
- (2) Have, keep, offer, or expose for sale;
- (3) Deliver for value or deliver in any other way than purely gratuitously;
- (4) Peddle;
- (5) Keep with intent to sell; and
- (6) Traffic in.

“Stamp” means a stamp printed, manufactured, or made by authority of the department, as provided in this chapter, that is issued, sold, or circulated by the department, and by the use of which the tax levied under this chapter is paid.”

SECTION 4. Section 245-3, Hawaii Revised Statutes, is amended by amending the title and subsection (a) to read as follows:

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

- (1) [Excise] An excise tax equal to]:
 - (A) 4.00 cents for each cigarette sold, used, or possessed by the wholesaler or dealer, after August 31, 1997; and
 - (B)] 5.00 cents for each cigarette sold, used, or, possessed by a wholesaler or dealer after June 30, 1998, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; and
- (2) [Excise] An excise tax 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.

Where the tax imposed has been paid on cigarettes or tobacco products which thereafter become the subject of a casualty loss deduction allowable under chapter 235, the tax paid shall be refunded or credited to the account of the wholesaler or dealer. [In applying the tax, the tax shall be applied against the latest of the activities of selling, using, or possessing. The tax shall be imposed at the time of the last of the following activities to occur: the sale; the use; or the possession of cigarettes or tobacco products.] The tax shall be applied to cigarettes through the use of stamps.”

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

“**§245-5 Returns.** Every [licensee,] wholesaler or dealer, on or before the last day of each month, shall file with the department [of taxation] a return showing the cigarettes and tobacco products sold, possessed, or used by the [licensee] wholesaler or dealer during the preceding calendar month and of the 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] include:

- (1) A separate statement of the number and wholesale price of cigarettes[, and the];
- (2) The amount of stamps purchased and used;
- (3) The wholesale price of tobacco products, sold, possessed, or used[, as it]; and
- (4) Any other information that the department may deem necessary, for the proper administration of this chapter.”

SECTION 6. 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] wholesaler or dealer shall pay to the department [of taxation] the taxes imposed by this chapter, required to be shown by the return[.], including the unpaid amount of taxes imposed by this chapter.

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

SECTION 7. Section 245-7, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) If it should appear upon [such] the 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 the examination, or as a result of any examination of the records of the [licensee] wholesaler or dealer, or of any other inquiry or investigation, that the correct amount of the taxes is greater than that shown on the return, or that any taxes imposed by this chapter have not been paid, an assessment of [such] the taxes may be made[,] in the manner provided in section 235-108(b). The amount of the 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] wholesaler or dealer has paid or returned with respect to any month more than the amount determined to be the correct amount of taxes for the month, the amount of the taxes so returned and any assessment of taxes made

pursuant to the return may be reduced, and any overpayment of taxes may be credited upon the taxes imposed by this chapter, or at the election of the [licensee,] wholesaler or dealer, the [licensee] wholesaler or dealer not being delinquent in the payment of any taxes owing to the State, may be refunded in the manner provided in section 231-23(c); provided that no reduction of taxes may be made when forbidden by subsection (b) or more than five years after the filing of the return.”

SECTION 8. Section 245-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) [Every] Each wholesaler [and] or dealer shall keep a record of [every];
- (1) Every sale or use of cigarettes and tobacco products by the wholesaler or dealer[, the];
 - (2) The number and wholesale price of cigarettes[, and the];
 - (3) The wholesale price of tobacco products, sold, possessed, or used[, and of the];
 - (4) The taxes payable [thereon,] on tobacco products sold, possessed, or used, if any[,]; and
 - (5) The amounts of stamps purchased and used,

in [such] a 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 or the attorney general, and shall be preserved for a period of five years, except that the department[,] and the attorney general, in writing, [may] shall both consent to their destruction within the five-year period or either the department or the attorney general may require that they be kept longer. The department, by rule, may require the [licensee] wholesaler or dealer to keep [such] other records as it may deem necessary for the proper enforcement of this chapter.”

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

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

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

“**§245-15 Disposition of revenues.** All moneys collected pursuant to this chapter shall be paid into the state treasury as state realizations to be kept and accounted for as provided by law[.], except for the amounts designated by section 245-U for distribution to the attorney general.”

SECTION 11. Section 712A-5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- “(1) The following is subject to forfeiture:
- (a) Property described in a statute authorizing forfeiture;
 - (b) Property used or intended for use in the commission of, attempt to commit, or conspiracy to commit a covered offense, or which facilitated or assisted such activity;

- (c) Any firearm which is subject to forfeiture under any other subsection of this section or which is carried during, visible, or used in furtherance of the commission, attempt to commit, or conspiracy to commit a covered offense, or any firearm found in proximity to contraband or to instrumentalities of an offense;
- (d) Contraband[, which] or untaxed cigarettes in violation of chapter 245, shall be seized and summarily forfeited to the State without regard to the procedures set forth in this chapter;
- (e) Any proceeds or other property acquired, maintained, or produced by means of or as a result of the commission of the covered offense;
- (f) Any property derived from any proceeds which were obtained directly or indirectly from the commission of a covered offense;
- (g) Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which has been established, participated in, operated, controlled, or conducted in order to commit a covered offense;
- (h) All books, records, bank statements, accounting records, microfilms, tapes, computer data, or other data which are used, intended for use, or which facilitated or assisted in the commission of a covered offense, or which document the use of the proceeds of a covered offense.”

SECTION 12. Section 712A-16, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) All property forfeited to the State under this chapter shall be transferred to the attorney general who:

- (a) May transfer property, other than currency, which shall be distributed in accordance with subsection (2) to any local or state government entity, municipality, or law enforcement agency within the State;
- (b) May sell forfeited property to the public by public sale; provided that for leasehold real property:
 - (i) The attorney general shall first offer the holder of the immediate reversionary interest the right to acquire the leasehold interest and any improvements built or paid for by the lessee for the then fair market value of the leasehold interest and improvements. The holder of the immediate reversionary interest shall have thirty days after receiving written notice within which to accept or reject the offer in writing; provided that the offer shall be deemed to be rejected if the holder of the immediate reversionary interest has not communicated acceptance to the attorney general within the thirty-day period. The holder of the immediate reversionary interest shall have thirty days after acceptance to tender to the attorney general the purchase price for the leasehold interest and any improvements, upon which tender the leasehold interest and improvements shall be conveyed to the holder of the immediate reversionary interest.
 - (ii) If the holder of the immediate reversionary interest fails to exercise the right of first refusal provided in subparagraph (i), the attorney general may proceed to sell the leasehold interest and any improvements by public sale.
 - (iii) Any dispute between the attorney general and the holder of the immediate reversionary interest as to the fair market value of the leasehold interest and improvements shall be settled by arbitration pursuant to chapter 658;

- (c) May sell or destroy all raw materials, products, and equipment of any kind used or intended for use in manufacturing, compounding, or processing a controlled substance[;] or any untaxed cigarettes in violation of chapter 245;
- (d) May compromise and pay valid claims against property forfeited pursuant to this chapter; or
- (e) May make any other disposition of forfeited property authorized by law.”

SECTION 13. The director of taxation shall submit findings and recommendations to the legislature no later than twenty days prior to the regular session of 2006 as to the effectiveness of this Act in reducing the loss of cigarette tax revenue to the State from illegal sales of untaxed cigarettes. The director of taxation may submit an interim report to the legislature on any findings relating to the effectiveness of this Act before 2006.

SECTION 14. The attorney general shall report to the legislature no later than twenty days before the convening of each of the regular sessions of 2002 and 2003 on its activities relating to this Act, including expenses, fines, and penalties collected, and forfeitures.

SECTION 15. There is appropriated out of the general revenues of the State of Hawaii the sum of \$35,000, or so much thereof as may be necessary for fiscal year 2000-2001 for start-up costs for implementing the cigarette stamp tax system, including a one-year supply of stamps and stamp cylinders.

The sum appropriated shall be expended by the department of taxation for the purposes of this Act.

SECTION 16. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2000-2001 for the attorney general to effectuate the provisions of this Act, including the hiring of necessary staff.

The sum appropriated shall be expended by the attorney general for the purposes of this Act.

SECTION 17. This Act does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 18. In codifying the new sections added to chapter 245, Hawaii Revised Statutes, by section 1 of this Act, and referred to in this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 20. This Act shall take effect upon its approval; provided that:

- (1) Sections 15 and 16 shall take effect on July 1, 2000; and
- (2) On June 30, 2006, this Act shall be repealed and sections 245-1, 245-3, 245-5, 245-6, 245-7(b) and (c), 245-8(a), 245-9, 245-15, 712A-5(1), and 712A-16(1), Hawaii Revised Statutes, shall be reenacted in the

form in which they read on the day before the approval of this Act.
(Approved June 19, 2000.)

Note

1. So in original.