

## ACT 64

S.B. NO. 1198

A Bill for an Act Relating to the Public Service Company Tax.

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

SECTION 1. The purpose of this Act is to effectuate an agreement entered into, by, and among the State of Hawaii, the city and county of Honolulu, the county of Maui, the county of Kauai, the county of Hawaii, and a number of public service companies by providing for a sharing of the public service company tax revenues with those counties that establish by ordinance an exemption from real property tax for public service companies. Although no party to the agreement has made any admissions with respect to issues involved in the pending litigation, one of the purposes of this Act is to clarify the tax imposed by section 239-5(a), Hawaii Revised Statutes, as a lawful exercise of the State's taxing authority, in accordance with Article VIII, sections 3 and 6, of the Hawaii Constitution.

SECTION 2. Section 239-4, Hawaii Revised Statutes, is amended to read as follows:

**“§239-4 Returns.** Each public service company, on or before the twentieth day of the fourth month following the close of the taxable year, shall file with the office of the department of taxation for the district within which the principal office of the public service company is maintained a return in such form as the department may prescribe, showing its taxable gross income for the preceding taxable year. In case any public service company engages in lines of business other than its public service company business, the receipts therefrom shall not be subject to tax under this chapter, but the same tax liabilities shall attach to the public service company on account of the other lines of business as would exist if no public service company business were engaged in. In the case of a public utility subject to the rate of tax imposed by section 239-5(a) or (b), if the public utility engages in lines of business other than its public utility business the real property used in connection with the other lines of business shall be taxed, in accordance with the applicable county tax ordinance, the same as if no public utility business were done. In the case of a public utility remitting payments to a county of a portion of the revenues generated from the tax imposed by section 239-5(a), the public utility shall also file with the director of finance of the county to which such payment is paid, a statement showing all gross income from the public utility business upon which the tax is calculated and the allocation of that gross income among the counties.”

SECTION 3. Section 239-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be levied and assessed upon each public utility, except airlines, motor carriers, common carriers by water, and contract carriers taxed by section 239-6, a tax of such rate per cent of its gross income each year from its public utility business as shall be determined in the manner hereinafter provided. The tax imposed by this section is in lieu of all taxes other than those below set out, and is a means of taxing the ~~[real property (owned by the public utility or leased to it by a lease under which the public utility is required to pay the taxes upon the property), and the] personal property of the public utility, tangible and intangible, including going concern value. In addition to the tax imposed by this chapter there also are imposed income taxes, the specific taxes imposed by chapter 249, the fees prescribed by chapter 269, any tax specifically imposed by the terms of the public~~

utility's franchise or under chapter 240, the use or consumption tax imposed by chapter 238, and employment taxes.

The rate of the tax upon the gross income of the public utility shall be four per cent; provided that if:

- (1) A county provides by ordinance for a real property tax exemption for real property used by a public utility in its public utility business and owned by the public utility (or leased to it by a lease under which the public utility is required to pay the taxes upon the property), and
- (2) The county has not denied the exemption to the public utility, but excluding a denial based upon a dispute as to the ownership, lease, or use of a specific parcel of real property,

then there shall be levied and assessed a tax in excess of the four per cent rate determined in the manner hereinafter provided upon the gross income allocable to such county. The revenues generated from the tax in excess of the four per cent rate hereinbefore established shall be paid by the public utility directly to such county based upon the proportion of gross income from its public utility business attributable to such county, based upon the allocation made in the public utility's filings with the State of Hawaii; provided that if the gross income from the public utility business attributable to such county is not so allocated in the public utility's State filings, then the gross income from the public utility business shall be equitably allocated to each county. The relative number of access lines in each county shall be deemed an acceptable basis of equitable allocation for telecommunication companies.

The rate of the tax in excess of the four per cent rate hereinbefore established upon the gross income [of] from the public utility business shall be determined as follows:

If the ratio of the net income of the company to its gross income is fifteen per cent or less, the rate of [the] tax in excess of the four per cent rate on gross income shall be [5-885] 1.885 per cent; for all companies having net income in excess of fifteen per cent of the gross, the rate of the tax on gross income shall increase continuously in proportion to the increase in ratio of net income to gross, at such rate that for each increase of one per cent in the ratio of net income to gross, there shall be an increase of .2675 per cent in the rate of the tax.

The following formula may be used to determine the rate, in which formula the term "R" is the ratio of net income to gross income, and "X" is the required rate of the tax on gross income for the utility in question:

$$X = [(1.8725 + 26.75R)] (26.75R - 2.1275)\%$$

provided that in no case governed by the formula shall "X" be less than [5-885] 1.885 per cent or more than [8-2] 4.2 per cent.

However, if the gross income is apportioned under section 239-8(b) or (c), there shall be no adjustment of the rate of tax on the amount of gross income so apportioned to the State on account of the ratio of the net income to the gross income being in excess of fifteen per cent, and it shall be assumed in such case that the ratio is fifteen per cent or less."

SECTION 4. Section 239-7, Hawaii Revised Statutes, is amended to read as follows:

**"§239-7 Assessments; payments; chapter 235 applicable.** (a) The tax imposed by this chapter shall be assessed against each public service company in the manner provided by this chapter, and shall be paid to the department of taxation at the times[;] and in the manner (in installments or otherwise) provided by this section[-;], except as provided in section 239-5(a), where there is levied and assessed a tax in excess of four per cent upon gross income, the revenues generated from the

tax in excess of the four per cent rate shall be paid to the respective county director of finance at the times and in the manner (in installments or otherwise) provided by this section.

(b) The total amount of the tax imposed by this chapter shall be paid on or before the twentieth day of the fourth month following the close of the taxable year. The public service company may elect to pay the tax in four equal installments, in which case the first installment shall be paid on or before the twentieth day of the fourth month following the close of the taxable year, the second installment shall be paid on or before the twentieth day of the sixth month following the close of the taxable year, the third installment shall be paid on or before the twentieth day of the ninth month following the close of the taxable year, and the fourth installment shall be paid on or before the twentieth day of the twelfth month following the close of the taxable year. Notwithstanding the preceding, if the total tax liability under this chapter for the taxable year exceeds \$100,000, the taxes so levied shall be payable in twelve equal installments, in which case the first installment shall be paid on or before the tenth day of the first month following the close of the taxable year, and the remaining installments shall be paid on or before the tenth day of each calendar month after such date. If any installment is not paid on or before the date fixed for its payment, the department[;] or the county director of finance as to payments due the county under section 239-5(a), at [its] the election[;] of the department or the county director, may cause the balance of the tax unpaid to become payable upon not less than ten days' notice and demand, and this amount shall be paid upon the date so fixed in the notice and demand from the department[;] or the county director of finance as to payments due to the county.

(c) The department shall prescribe the forms in which returns shall be made so as to reflect clearly the liability of each public service company subject to this tax, and may provide in the forms for such additional information as it may deem necessary. All provisions of the laws, not inapplicable and not inconsistent with this chapter, relating to returns for income tax purposes, the assessment (including additional assessments), collection, and payment (in installments or otherwise) of income taxes and the powers and duties of the department and the State director of finance in connection therewith, and relating to appeals from or other adjustments of such assessments, limitation periods for assessments, enforcement of attendance of witnesses, and the production of evidence, examination of witnesses and records, the effect of assessments, tax books, and lists and other official tax records as evidence, delinquent dates and penalties, and the rights and liabilities (civil and criminal) of taxpayers and other persons in connection with any matters dealt with by chapter 235, are made applicable (1) to the taxes and the assessment, payment, and collection thereof, provided by this chapter, and (2) to the department and the state director of finance in connection with the taxes and the assessment, payment, or enforcement of payment and collection thereof, and (3) to taxpayers and other persons affected by this chapter, as the case may be. The provisions of chapter 235 regarding the limitation period for assessment and refunds shall run from the filing of the return for the taxable year, or the due date prescribed for the filing of the return, whichever is later. With respect to payments due to a county of the revenues generated from the tax in excess of the four per cent rate imposed under section 239-5(a), a county director of finance shall be afforded such rights and procedures of the department in the enforcement of payment and collection of the taxes assessed and levied under this chapter.”

SECTION 5. Section 239-10, Hawaii Revised Statutes, is amended to read as follows:

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**“§239-10 Disposition of revenues.** All taxes collected under this chapter shall be state realizations~~[-];~~ provided that where a tax in excess of the four per cent rate upon gross income is levied and assessed under section 239-5(a), such tax revenues to be paid to the county shall be realizations of such county.”

SECTION 6. Section 239-3, Hawaii Revised Statutes, is repealed.

SECTION 7. Transition period. Commencing with the July 2001, installment of the remaining quarterly or monthly installments of the tax upon gross income which has been levied and assessed for the calendar year 2001 under section 239-5(a), Hawaii Revised Statutes, that portion of each such installment that is described in section 3 of this Act as the tax in excess of the rate of four per cent that is paid to a county if the county provides for a real property tax exemption for real property used by a public utility in its public utility business, shall be paid to the respective county director of finance as provided in section 3 of this Act. Provided that for the period July 2001 to December 2001, if a public utility is not required to pay to a particular county director of finance tax in excess of the rate of four per cent, as provided in section 3 of this Act, the public utility shall not be liable to the State or respective county for such portion of the installments of the tax imposed in excess of the rate of four per cent under section 239-5(a), Hawaii Revised Statutes, for the period July 2001 to December 2001.

SECTION 8. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2001.

(Approved April 26, 2001.)

### Note

1. Edited pursuant to HRS §23G-16.5.