

ACT 9

S.B. NO. 6

A Bill for an Act Relating to Taxation of Transportation Service Providers.

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

SECTION 1. The terrorist attacks on September 11, 2001, have stunned the nation and have had far-ranging impacts that threaten to paralyze our national economy. As a result, we have experienced a dramatic decrease in air travel, which has a particularly damaging effect on Hawaii's tourism-based economy.

To counteract these negative effects, this Act subjects transportation service providers to the general excise tax under section 237-13(6), Hawaii Revised Statutes, in lieu of the public service company tax imposed under section 239-6, Hawaii Revised Statutes.

The public service company tax is imposed on transportation service providers including motor carriers, common carriers by water, and contract carriers, and is a means of taxing the carrier's personal property, tangible and intangible, including the going concern value. The tax is generally measured at the rate of four per cent on the gross income from the provider's public service company business earned in the previous taxable year. Because the public service company tax is based upon the prior year's gross income, the tax may not correspond to the taxpayer's current year's receipts or activities.

Under improving economic conditions, the public service company tax is favorable to transportation service providers because the provider would pay a tax equal to four per cent of its prior year's income, which would be less than a four per cent tax measured by its higher current year's income. However, in a declining market place, the provider may have to pay more in taxes than its current gross income can support.

The purpose of this Act is to allow transportation service providers to report under the general excise tax chapter instead of the public service company tax system, which would allow them to pay a four per cent tax based on their actual income for the current period. This will more than likely result in tax savings to them given the anticipated economic climate.

SECTION 2. Section 237-7, Hawaii Revised Statutes, is amended to read as follows:

“§237-7 “Service business or calling”, defined. “Service business or calling” includes all activities engaged in for other persons for a consideration which involve the rendering of a service, including professional and transportation services, as distinguished from the sale of tangible property or the production and

sale of tangible property. "Service business or calling" does not include the services rendered by an employee to the employee's employer."

SECTION 3. Section 237-18, Hawaii Revised Statutes, is amended to read as follows:

"§237-18 Further provisions as to application of tax. (a) Where a coin operated device produces gross income which is divided between the owner or operator of the device, on the one hand, and the owner or operator of the premises where the device is located, on the other hand, the tax imposed by this chapter shall apply to each such person with respect to the person's portion of the proceeds, and no more.

(b) Where gate receipts or other admissions are divided between the person furnishing or producing a play, concert, lecture, athletic event, or similar spectacle (including any motion picture showing) on the one hand, and a promoter (including any proprietor or other operator of a motion picture house) offering the spectacle to the public, on the other hand, the tax imposed by this chapter, if the promoter is subject to the tax imposed by this chapter, shall apply only to the promoter measured by the whole of the proceeds, and the promoter shall be authorized to deduct and withhold from the portion of the proceeds payable to the person furnishing or producing the spectacle the amount of the tax payable by the person upon such portion. No tax shall apply to a promoter with respect to such portion of the proceeds as is payable to a person furnishing or producing the spectacle, who is exempted by section 237-23 from taxation upon such activity.

(c) Where, through the activity of a person taxable under section 237-13(6), a product has been milled, processed, or otherwise manufactured upon the order of another taxpayer who is a manufacturer taxable upon the value of the entire manufactured products, which consists in part of the value of the services taxable under section 237-13(6), so much gross income as is derived from the rendering of the services shall be subjected to tax on the person rendering the services at the rate of one-half of one per cent, and the value of the entire product shall be included in the measure of the tax imposed on the other taxpayer as elsewhere provided.

(d) Where, through the activity of a person taxable under section 237-13(6), there have been rendered to a cane planter services consisting in the harvesting or hauling of the cane, or consisting in road maintenance, under a contract between the person rendering the services and the cane planter, covering the services and also the milling of the sugar, the services of harvesting and hauling the cane and road maintenance shall be treated the same as the service of milling the cane, as provided by subsection (c), and the value of the entire product, manufactured or sold for the cane planter under the contract, shall be included in the measure of the tax imposed on the person as elsewhere provided.

(e) Where insurance agents, including general agents, subagents, or solicitors, who are not employees and are licensed pursuant to chapter 431, or real estate brokers or salespersons, who are not employees and are licensed pursuant to chapter 467, produce commissions which are divided between such general agents, subagents, or solicitors, or between such real estate brokers or salespersons, as the case may be, the tax levied under section 237-13(6) or under section 237-16 as to real estate brokers or salespersons, or under section 237-13(7) as to insurance general agents, subagents, or solicitors shall apply to each such person with respect to the person's portion of the commissions, and no more.

(f) Where tourism related services are furnished through arrangements made by a travel agency or tour packager and the gross income is divided between the provider of the services and the travel agency or tour packager, the tax imposed by

this chapter shall apply to each such person with respect to such person's respective portion of the proceeds, and no more.

As used in this subsection "tourism related services" means catamaran cruises, canoe rides, dinner cruises, lei greetings, transportation included in a tour package, sightseeing tours not subject to chapter 239, admissions to luaus, dinner shows, extravaganzas, cultural and educational facilities, and other services rendered directly to the customer or tourist, but only if the providers of the services other than air transportation are subject to a four per cent tax under this chapter or chapter 239.

(g) Where transient accommodations are furnished through arrangements made by a travel agency or tour packager at noncommissioned negotiated contract rates and the gross income is divided between the operator of transient accommodations on the one hand and the travel agency or tour packager on the other hand, the tax imposed by this chapter shall apply to each such person with respect to such person's respective portion of the proceeds, and no more.

As used in this subsection, the words "transient accommodations" and "operator" shall be defined in the same manner as they are defined in section 237D-1.

(h) Where the transportation of passengers or property is furnished through arrangements between motor carriers, and the gross income is divided between the motor carriers, any tax imposed by this chapter shall apply to each motor carrier with respect to each motor carriers' respective portion of the proceeds.

As used in this subsection:

"Carrier" means a person who engages in transportation, and does not include a person such as a freight forwarder or tour packager who provides transportation by contracting with others, except to the extent that such person oneself engages in transportation.

"Contract carrier" means a person other than a public utility as defined under section 239-2 or taxicab, which under contracts or agreements, engages in the transportation of persons or property for compensation, by land, water, or air.

"Motor carrier" means a common carrier or contract carrier transporting persons or property for compensation on the public highways, other than a public utility as defined under section 239-2 or taxicab.

"Public highways" has the meaning defined by section 264-1 including both state and county highways, but operation upon rails shall not be deemed transportation on the public highways."

SECTION 4. Section 239-6, Hawaii Revised Statutes, is amended to read as follows:

"§239-6 Airlines, certain carriers. (a) There shall be levied and assessed upon each airline a tax of four per cent of its gross income each year from the airline business; provided that if an airline adopts a rate schedule for students in grade twelve or below traveling in school groups providing such students at reasonable hours a rate less than one-half of the regular adult fare, the tax shall be three per cent of its gross income each year from the airline business.

(b) There shall be levied and assessed upon each motor carrier, each common carrier by water, and upon each contract carrier other than a motor carrier, a tax of four per cent of its gross income each year from the motor carrier or contract carrier business.

(c) The tax imposed by this section is a means of taxing the personal property of the airline or other carrier, tangible and intangible, including going concern value, and is in lieu of the tax imposed by chapter 237 but is not in lieu of any other tax.

(d) Notwithstanding subsections (a), (b), and (c), the rate of tax upon the portion of the gross income of a motor carrier which consists of the receipts from the sale of its products or services to a contractor shall be as follows:

- (1) In calendar year 2000, 3.5 per cent;
- (2) In calendar year 2001, 3.0 per cent;
- (3) In calendar year 2002, 2.5 per cent;
- (4) In calendar year 2003, 2.0 per cent;
- (5) In calendar year 2004, 1.5 per cent;
- (6) In calendar year 2005, 1.0 per cent; and
- (7) In calendar year 2006, and thereafter, 0.5 per cent;

provided that there is a resale of the products or services and the resale by the contractor is subject to taxation at the highest rate under section 237-13 or 237-16; the gross income of the motor carrier is not divided as provided in the definition of "gross income" in section 239-2 for the tax imposed under this chapter or chapter 237; and the gross income of the motor carrier from the sale of its products or services to the contractor is not subject to a deduction under chapter 237 by the contractor; and in the case of services provided by the motor carrier, the benefit of the service passes to the customer of the contractor as an identifiable element of the contracting or service provided by the contractor and does not constitute overhead as defined in section 237-1.

The department shall have the authority to implement the tax rate changes in paragraphs (1) through (7) by prescribing tax forms and instructions that require tax reporting and payment by deduction, allocation, or any other method to determine tax liability with due regard to the tax rate changes.

For purposes of this subsection, "contractor" has the same meaning as defined in section 237-6.

(e) Notwithstanding subsections (a) through (d), beginning on October 1, 2001, the tax under this chapter shall not apply to airlines, motor carriers, common carriers by water, and contract carriers other than motor carriers; provided that the gross income received on or after October 1, 2001, by these carriers shall be subject to the tax imposed under chapter 237. For the taxable year in which October 1, 2001 occurs, the tax imposed and due under this chapter for the affected carriers shall be abated in an amount equal to:

- (1) The tax imposed on the first day of the taxpayer's taxable year in which October 1, 2001 occurs;
- (2) Divided by the number of months in the taxpayer's affected taxable year; and
- (3) Multiplied by the number of months in the taxpayer's taxable year remaining after September 30, 2001.'

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

SECTION 6. This Act shall take effect upon its approval; provided that the gross income received on or after October 1, 2001, by transportation service providers shall be subject to the tax imposed under chapter 237, Hawaii Revised Statutes.

(Approved November 2, 2001.)