

**ACT 146**

S.B. NO. 1453

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

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

SECTION 1. This Act supersedes the tax appeal court's decision in *In the matter of the Tax Appeal of the Director of Taxation, State of Hawaii v. Laie Treatment Works, Inc.*, Tax Appeal Court, Case No. 02-0067. The legislature finds that a private sewer company or private sewer facility is a company or facility that should be deemed a public utility for purposes of the public service company tax.

The purpose of this Act is to levy and assess the public service company tax upon the gross income derived from the operation of a private sewer company or facility.

SECTION 2. Section 239-2, Hawaii Revised Statutes, is amended by amending the definition of “gross income” to read as follows:

““Gross income” means the gross income from public service company business as follows:

- (1) Gross income from the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil;
- (2) Gross income from the transportation of passengers or freight, or the conveyance or transmission of telephone or telegraph messages other than mobile telecommunications services, or the furnishing of facilities for the transmission of intelligence by electricity, by land or water or air:
  - (A) Originating and terminating within this State;
  - (B) By means of vessels or aircraft having their home port in the State and operating between ports or airports in the State, with respect to the transportation so effected; or
  - (C) By means of plant or equipment located in the State, between points in the State; [ø]
- (3) Gross income from the transportation of freight by motor carriers (other than as stated in paragraph (2)), or the conveyance or transmission of messages or intelligence through wires or cables located or partly located in the State (other than as stated in paragraph (2) or [(4)]; ø] (5));
- (4) Gross income from the operation of a private sewer company or private sewer facility; or
- [(4)] (5) With respect to a home service provider of mobile telecommunications services, “gross income” includes charges billed for mobile telecommunications services provided by a home service provider to a customer with a place of primary use in this State when the mobile telecommunications services originate and terminate within the same state; provided that all such charges for mobile telecommunications services that are billed by or for the home service provider are deemed to be provided by the home service provider at the customer’s place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through. [~~Gross income~~] “Gross income” shall not include:
  - (A) Any charges for or receipts from mobile telecommunications services provided to customers of the home service provider whose place of primary use is outside this State;
  - (B) Any receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider’s customer; and
  - (C) Any receipts specifically from interstate or foreign mobile telecommunications services taxable under section 237-13(6)(E), as determined by the home service provider’s books and records kept in the ordinary course of business.

For the purposes of this paragraph, “customer”, “home service provider”, “mobile telecommunications services”, “place of primary use”, and “serving carrier” have the same meaning as in section 239-22.

The words “gross income” and “gross income from public service company business” shall not be construed to include dividends (as defined by section 235-1) paid by one member of an affiliated public service company group to another member of the same group; or gross income from the sale or transfer of materials or supplies, interest on loans, or the provision of engineering, construction, maintenance, or managerial services by one member of an affiliated public service company group to another member of the same group. “Affiliated public service

company group” means an affiliated group of domestic corporations within the meaning of chapter 235, all of the members of which are public service companies. “Member of an affiliated public service company group” means a corporation (including the parent corporation) ~~which~~ that is included within an affiliated public service company group.

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’~~ carrier’s respective portion of the proceeds.

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 on the one hand and the travel agency or tour packager on the other hand, any tax imposed by this chapter shall apply to each person with respect to each person’s respective portion of the proceeds.

Accounts found to be worthless and actually charged off for income tax purposes, at corresponding periods, may be deducted from gross income as specified under this chapter so far as ~~they~~ the accounts reflect taxable sales, but shall be added to gross income when and if subsequently collected.

As used in this paragraph “tourism related services” means motor carriers of passengers regulated by the public utilities commission.”

SECTION 3. This Act shall apply to gross income derived from operation as a private sewer company or private sewer facility that accrued beginning July 1, 2005.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2005.

(Approved June 22, 2005.)