

## ACT 198

H.B. NO. 371

A Bill for an Act Relating to Taxation.

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

SECTION 1. The legislature finds that current technology in generating electric power allows for a variety of liquid fuels. While diesel fuel and fuel oil are used in older electric power generation technology, newer technology permits the use of multiple types of liquid fuel, some of which were previously used for transportation purposes, such as naphtha.

Upon finding that the State's highway tax law did not specifically address naphtha when it is used for electric-power generation, the legislature passed Act 103, Session Laws of Hawaii 2007 (Act 103), that imposed a 1 cent per gallon tax on naphtha when sold for use in a power-generating facility. The provision imposing the 1 cent per gallon tax is scheduled to sunset on December 31, 2009.

The purpose of this Act is to:

- (1) Extend by three years the sunset provision in Act 103 relating to the tax on naphtha sold for use in a power-generating facility; and
- (2) Increase the tax from 1 cent per gallon to 2 cents per gallon.

SECTION 2. Section 243-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every distributor, in addition to any other taxes provided by law, shall pay a license tax to the department of taxation for each gallon of liquid fuel refined, manufactured, produced, or compounded by the distributor and sold or used by the distributor in the State or imported by the distributor, or acquired by the distributor from persons who are not licensed distributors, and sold or used by the distributor in the State. Any person who sells or uses any liquid fuel, knowing that the distributor from whom it was originally purchased has not paid and is not paying the tax thereon, shall pay such tax as would have applied to such sale or use by the distributor. The rates of tax imposed are as follows:

- (1) For each gallon of diesel oil, 2 cents;
- (2) For each gallon of gasoline or other aviation fuel sold for use in or used for airplanes, 2 cents;
- (3) For each gallon of naphtha sold for use in a power-generating facility, [~~1 cent;~~] 2 cents;
- (4) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), and other than an alternative fuel, sold or used in the city and county of Honolulu, or sold in any county for ultimate use in the city and county of Honolulu, 17 cents state tax, and in addition thereto an amount, to be known as the “city and county of Honolulu fuel tax”, as shall be levied pursuant to section 243-5;
- (5) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), and other than an alternative fuel, sold or used in the county of Hawaii, or sold in any county for ultimate use in the county of Hawaii, 17 cents state tax, and in addition thereto an amount, to be known as the “county of Hawaii fuel tax”, as shall be levied pursuant to section 243-5;
- (6) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), and other than an alternative fuel, sold or used in the county of Maui, or sold in any county for ultimate use in the county of Maui, 17 cents state tax, and in addition thereto an

amount, to be known as the “county of Maui fuel tax”, as shall be levied pursuant to section 243-5; and

- (7) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), and other than an alternative fuel, sold or used in the county of Kauai, or sold in any county for ultimate use in the county of Kauai, 17 cents state tax, and in addition thereto an amount, to be known as the “county of Kauai fuel tax”, as shall be levied pursuant to section 243-5.

If it is shown to the satisfaction of the department, based upon proper records and from any other evidence as the department may require, that liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), is used for agricultural equipment that does not operate upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by this section in excess of 1 cent per gallon. The department shall adopt rules to administer such refunds.”

SECTION 3. Act 103, Session Laws of Hawaii 2007, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval; provided that:

- (1) The amendments made to this Act to:
- (A) The definition of “power-generating facility” in section 243-1, Hawaii Revised Statutes; and
  - (B) Section 243-4(a), Hawaii Revised Statutes[?], shall be repealed on December 31, [~~2009~~] 2012, and section 243-4(a), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and
- (2) The rate of tax for naphtha as provided for in section 243-4(a)(3), Hawaii Revised Statutes, shall be effective retroactively and apply to any imposition of the fuel tax on naphtha sold for use in a power-generating facility.”

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, 2009.

(Became law on July 15, 2009, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)