

ACT 22

H.B. NO. 2600

A Bill for an Act Relating to Tax Administration.

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

SECTION 1. The purpose of this measure is to conform the filing and payment deadlines for miscellaneous taxes with the filing and payment deadline of the general excise tax, as amended by Act 196, Session Laws of Hawaii 2009. This measure also amends the periodic filing and payment of insurance premiums taxes from quarterly to monthly.

SECTION 2. Section 237D-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) On or before the [last] twentieth day of each calendar month, every operator taxable, or plan manager liable under this chapter during the preceding calendar month shall file a sworn return with the director in such form as the director shall prescribe together with a remittance for the amount of the tax in the form required by section 237D-6.5. Sections 237-30 and 237-32 shall apply to returns and penalties made under this chapter to the same extent as if the sections were set forth specifically in this section.

(b) Notwithstanding subsection (a), the director of taxation, for good cause, may permit a taxpayer to file the taxpayer’s return required under this section and make payments thereon:

- (1) On a quarterly basis during the calendar or fiscal year, the return and payment to be made on or before the [last] twentieth day of the calendar month after the close of each quarter, to wit: for calendar year taxpayers, on or before April [30,] 20, July [31,] 20, October [31,] 20, and January [31] 20 or, for fiscal year taxpayers, on or before the [last] twentieth day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the [last] twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer’s total tax liability for the calendar or fiscal year under this chapter will not exceed \$4,000; or

- (2) On a semiannual basis during the calendar or fiscal year, the return and payment to be made by or before the [last] twentieth day of the calendar month after the close of each six-month period, to wit: for calendar year taxpayers, on July [31] 20 and January [31] 20 or, for fiscal year taxpayers, on or before the [last] twentieth day of the seventh month following the beginning of the fiscal year and on or before the [last] twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed \$2,000.

The director, for good cause, may permit a taxpayer to make monthly payments based on the taxpayer's estimated quarterly or semiannual liability; provided that the taxpayer files a reconciliation return at the end of each quarter or at the end of each six-month period during the calendar or fiscal year, as provided in this section."

SECTION 3. Section 238-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) On or before the [last] twentieth day of each calendar month, any person who has become liable for the payment of a tax under this chapter during the preceding calendar month in respect of any property, services, or contracting, or the use thereof, shall file a return with the assessor of the taxation district in which the property was held or the services or contracting were received when the tax first became payable, or with the director of taxation at Honolulu, setting forth a description of the property, services, or contracting and the character and quantity thereof in sufficient detail to identify the same or otherwise in such reasonable detail as the director by rule shall require, and the purchase price or value thereof as the case may be. The return shall be accompanied by a remittance in full of the tax, computed at the rate specified in section 238-2 or 238-2.3 upon the price or value so returned. Any tax remaining unpaid after the [last] twentieth day following the end of the calendar month during which the tax first became payable shall become delinquent; provided that a receipt from a seller required or authorized to collect the tax, given to a taxpayer in accordance with section 238-6, shall be sufficient to relieve the taxpayer from further liability for the tax to which the receipt may refer, or for the return thereof.

(b) Notwithstanding subsection (a), a taxpayer may be eligible to file the taxpayer's return required under this section and make payments thereon on a quarterly or semiannual basis during the calendar or fiscal year, the return and payment to be made on or before the [last] twentieth day of the calendar month after the close of each quarter or semiannual period, to wit:

- (1) For calendar year taxpayers filing on a quarterly basis, on or before April [30,] 20, July [31,] 20, October [31,] 20, and January [31,] 20;
- (2) For calendar year taxpayers filing on a semiannual basis, on or before July [31,] 20, and January [31,] 20;
- (3) For fiscal year taxpayers filing on a quarterly basis, on or before the [last] twentieth day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the [last] twentieth day of the month following the close of the fiscal year; or
- (4) For fiscal year taxpayers filing on a semiannual basis, on or before the [last] twentieth day of the seventh month following the beginning of the fiscal year and on or before the [last] twentieth day of the month following the close of the fiscal year;

if the taxpayer possesses a valid and current permit to file the taxpayer's general excise tax return and to make payments thereon on a quarterly or semiannual basis issued by the director pursuant to section 237-30. A taxpayer may also be eligible to make monthly payments based on the taxpayer's estimated quarterly or semiannual liability with a reconciliation return at the end of each quarter or semiannual period during the calendar or fiscal year, as heretofore provided, if the taxpayer possesses a valid and current permit to file quarterly or semiannual reconciliation general excise tax returns and to make monthly payments, issued by the director pursuant to section 237-30."

SECTION 4. Section 243-10, Hawaii Revised Statutes, is amended to read as follows:

"§243-10 Statements and payments. Each distributor and each person subject to section 243-4(b), on or before the [last] twentieth day of each calendar month, shall file with the director of taxation, on forms prescribed, prepared, and furnished by the director, a statement, authenticated as provided in section 231-15, showing separately for each county and for the island of Lanai and the island of Molokai within which and whereon fuel is sold or used during each preceding month of the calendar year, the following:

- (1) The total number of gallons of fuel refined, manufactured, or compounded by the distributor or person within the State and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;
- (2) The total number of gallons of fuel acquired by the distributor or person during the month from persons not subject to the tax on the transaction or only subject to tax thereon at the rate of 1 cent per gallon, as the case may be, and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;
- (3) The total number of gallons of fuel sold by the distributor or person to the United States or any department or agency thereof, or to any other person or entity, or used in any manner, the effect of which sale or use is to exempt the fuel from the tax imposed by this chapter;
- (4) Additional information relative to the acquisition, purchase, manufacture, or importation into the State, and the sale, use, or other disposition, of diesel oil by the distributor or person during the month, as the department of taxation by rule shall prescribe.

At the time of submitting the foregoing report to the department, each distributor and person shall pay the tax on each gallon of fuel (including diesel oil) sold or used by the distributor or person in each county and on the island of Lanai and the island of Molokai during the preceding month, as shown by the statement and required by this chapter; provided that the tax shall not apply to any fuel exempted and so long as the same is exempted from the imposition of the tax by the Constitution or laws of the United States; and the tax shall be paid only once upon the same fuel; provided further that a licensed distributor shall be entitled, in computing the tax the licensed distributor is required to pay, to deduct from the gallons of fuel reported for the month for each county or for the island of Lanai or the island of Molokai, as the case may be, one gallon for each ninety-nine gallons of like liquid fuel sold by retail dealers in that county or on that island during the month, as shown by certificates furnished by the retail dealers to the distributor and attached to the distributor's report. All taxes pay-

able for any month shall be delinquent after the expiration of the [last] twentieth day of the following month.

Statements filed under this section concerning the number of gallons of fuel refined, manufactured, compounded, imported, sold or used by the distributor or person are public records.”

SECTION 5. Section 244D-6, Hawaii Revised Statutes, is amended to read as follows:

“§244D-6 **Return, form, contents.** Every taxpayer shall, on or before the [last] twentieth day of each month, file with the department of taxation in the taxation district in which the taxpayer’s business premises are located, or with the department in Honolulu, a return showing all sales of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a) made by the taxpayer during the preceding month, showing separately the amount of the nontaxable sales, and the amount of the taxable sales, and the tax payable thereon. The return shall also show the amount of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a) used during the preceding month which is subject to tax, and the tax payable thereon. The form of return shall be prescribed by the department and shall contain such information as it may deem necessary for the proper administration of this chapter.”

SECTION 6. Section 245-5, Hawaii Revised Statutes, is amended to read as follows:

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

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

SECTION 7. Section 245-28, Hawaii Revised Statutes, is amended to read as follows:

“~~§245-28~~ **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] twentieth day of the following calendar month. Payment shall be made by a remittance payable to the department.”

SECTION 8. Section 245-31, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§245-31~~]]~~ **Monthly report on distributions of cigarettes and tobacco products, and purchases of stamps.** (a) On or before the ~~[last]~~ twentieth 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]~~ twentieth 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.”

SECTION 9. Section 251-4, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) On or before the ~~[last]~~ twentieth day of each calendar month, every person taxable under this chapter during the preceding calendar month shall file a sworn return with the director in such form as the director shall prescribe together with a remittance for the amount of the surcharge tax in the form required by section 251-5. Sections 237-30 and 237-32 shall apply to returns and penalties made under this chapter to the same extent as if the sections were set forth specifically in this section.

(b) Notwithstanding subsection (a), the director, for good cause, may permit a person to file the person's return required under this section and make payments thereon:

- (1) On a quarterly basis during the calendar or fiscal year, the return and payment to be made on or before the ~~[last]~~ twentieth day of the calendar month after the close of each quarter, to wit: for calendar year taxpayers, on or before April ~~[30,]~~ 20, July ~~[31,]~~ 20, October ~~[31,]~~ 20, and January ~~[31]~~ 20 or, for fiscal year taxpayers, on or before the ~~[last]~~ twentieth day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the ~~[last]~~ twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the surcharge taxes due thereon and that the person's total surcharge tax liability for the calendar or fiscal year under this chapter will not exceed \$4,000; or
- (2) On a semiannual basis during the calendar or fiscal year, the return and payment to be made by or before the ~~[last]~~ twentieth day of the calendar month after the close of each six-month period, to wit: for calendar year taxpayers, on July ~~[31]~~ 20 and January ~~[31]~~ 20 or, for fiscal year taxpayers, on or before the ~~[last]~~ twentieth day of the seventh month following the beginning of the fiscal year and on or before the ~~[last]~~ twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the surcharge taxes due thereon and that the person's total surcharge tax liability for the calendar or fiscal year under this chapter will not exceed \$2,000.

The director, for good cause, may permit a person to make monthly payments based on the person's estimated quarterly or semiannual liability; pro-

vided that the person files a reconciliation return at the end of each quarter or at the end of each six-month period during the calendar or fiscal year, as provided in this section.”

SECTION 10. Section 431:7-201, Hawaii Revised Statutes, is amended to read as follows:

“**§431:7-201 Annual and ~~quarterly~~ monthly tax statements.** (a) Each authorized insurer shall file with the commissioner annually, on or before March 1 in each year, a statement signed by a duly authorized person on its behalf, setting forth the total business transacted, and the amount of gross premiums reported by the insurer, pursuant to section 431:7-202, during the year ending on the preceding December 31, from all risks or property resident, situated, or located within this State, together with such other information as may be required by the commissioner to determine the taxability of premiums. The term “gross premiums” as used in this part shall not include consideration paid for annuities.

(b) Each authorized insurer shall file with the commissioner ~~quarterly,~~ monthly, on or before the ~~last~~ twentieth day of the calendar month following the ~~quarter,~~ month in which the taxes accrue, a statement signed by a duly authorized person on its behalf, setting forth the total business transacted and the amount of gross premiums reported by the insurer, pursuant to section 431:7-202, during the ~~quarter~~ month from all risks or property resident, situated, or located within this State, together with other information as may be required by the commissioner to determine the taxability of premiums.

(c) Any insurer failing or refusing to file the annual tax statement on or before March 1, or the ~~quarterly~~ monthly statement on or before the ~~last~~ twentieth day of the calendar month following the ~~quarter,~~ month in which the taxes accrue, shall be liable for a fine in an amount not less than \$100 and not more than \$500 for each day of delinquency.”

SECTION 11. Section 431:7-202, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The taxes imposed by subsections (a), (b), (c), and (d) shall be paid ~~quarterly,~~ monthly. The ~~quarterly~~ monthly tax shall be due and payable on or before the ~~last~~ twentieth day of the calendar month following the ~~quarter~~ month in which it accrues, coinciding with the filing of the statement provided for in section 431:7-201.

In addition to the ~~quarterly~~ monthly tax and ~~quarterly~~ monthly tax statement, the annual tax shall be due and payable on or before March 1 coinciding with the filing of the statement provided for in section 431:7-201.

All amounts paid under this subsection, other than fines, shall be allowed as a credit on the annual tax imposed by subsections (a), (b), (c), and (d).

If the total amount of installment payments for any calendar year exceeds the amount of annual tax for that year, the excess shall be treated as an overpayment of the annual tax and be allowed as a refund under section 431:7-203.

Any insurer failing or refusing to pay the required taxes above stated when due and payable shall be liable for a fine of \$500 or ten per cent of the tax due, whichever is greater; plus interest at a rate of twelve per cent per annum on the delinquent taxes. The taxes may be collected by distraint, or the taxes, fine, and interest may be recovered by an action to be instituted by the commissioner in the name of this State, in any court of competent jurisdiction. The commissioner may suspend the certificate of authority of the delinquent insurer until the taxes, fine, and interest, should any be imposed, are fully paid.”

SECTION 12. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2010.

(Approved April 14, 2010.)