

ACT 184

H.B. NO. 1705

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 residents in certain rural areas in the State do not have access to public utility water services. The legislature also finds that in some of these unserved areas, private nonprofit companies, such as Napu‘u Water, Inc., have been established for the sole purpose of supplying potable water to the community. Although these companies are federally tax-exempt under section 501(c)(12) of the Internal Revenue Code, they are still subject to the state income and general excise taxes. The legislature further finds that, in the interests of fairness and equity, nonprofit companies that are operated exclusively to supply potable water to communities that lack any access to public utility water services should receive the same tax treatment as water companies owned by a county or municipality.

The purpose of this Act is to exempt from the state income and general excise taxes, privately-owned nonprofit public water systems that supply potable water to residential communities that lack any access to public utility water services and are federally tax-exempt under section 501(c)(12) of the Internal Revenue Code.

SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

- (1) Subchapter A (sections 1 to 59A) (with respect to determination of tax liability), except section 1(h)(2) (relating to net capital gain reduced by the amount taken into account as investment income), except sections 2(a), 2(b), and 2(c) (with respect to the definition of “surviving spouse” and “head of household”), except section 41 (with respect to the credit for increasing research activities), except section 42 (with respect to low-income housing credit), except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property), and except section 48(d)(3), as amended, as of February 17, 2009 (with respect to the treatment of United States Department of Treasury grants

- made under section 1603 of the American Recovery and Reinvestment Tax Act of 2009). For treatment, see sections 235-110.91, 235-110.7, and 235-110.8;
- (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit);
 - (3) Section 86 (with respect to social security and tier 1 railroad retirement benefits);
 - (4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b);
 - (5) Section 114 (with respect to extraterritorial income). For treatment, any transaction as specified in the transitional rule for 2005 and 2006 as specified in the American Jobs Creation Act of 2004 section 101(d) and any transaction that has occurred pursuant to a binding contract as specified in the American Jobs Creation Act of 2004 section 101(f) are inoperative;
 - (6) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11);
 - (7) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3);
 - (8) Section 135 (with respect to income from United States savings bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1);
 - (9) Section 139C (with respect to COBRA premium assistance);
 - (10) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds);
 - (11) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54;
 - (12) Section 179B (with respect to expensing of capital costs incurred in complying with Environmental Protection Agency sulphur regulations);
 - (13) Section 181 (with respect to special rules for certain film and television productions);
 - (14) Section 196 (with respect to deduction for certain unused investment credits);
 - (15) Section 199 (with respect to the U.S. production activities deduction);
 - (16) Section 222 (with respect to qualified tuition and related expenses);
 - (17) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c);
 - (18) Section 280C (with respect to certain expenses for which credits are allowable). For treatment, see section 235-110.91;
 - (19) Section 291 (with respect to special rules relating to corporate preference items);
 - (20) Section 367 (with respect to foreign corporations);
 - (21) Section 501(c)(12), (15), (16) (with respect to exempt organizations); except that section 501(c)(12) shall be operative for companies that provide potable water to residential communities that lack any access to public utility water services;
 - (22) Section 515 (with respect to taxes of foreign countries and possessions of the United States);
 - (23) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders);

- (24) Subchapter H (sections 581 to 597) (with respect to banking institutions), except section 584 (with respect to common trust funds). For treatment, see chapter 241;
- (25) Section 642(a) and (b) (with respect to special rules for credits and deductions applicable to trusts). For treatment, see sections 235-54(b) and 235-55;
- (26) Section 646 (with respect to tax treatment of electing Alaska Native settlement trusts);
- (27) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts);
- (28) Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204;
- (29) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55;
- (30) Section 853A (with respect to credits from tax credit bonds allowed to shareholders);
- (31) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, and 235-7(b), and 235-55;
- (32) Section 1042(g) (with respect to sales of stock in agricultural refiners and processors to eligible farm cooperatives);
- (33) Section 1055 (with respect to redeemable ground rents);
- (34) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange);
- (35) Sections 1291 to 1298 (with respect to treatment of passive foreign investment companies);
- (36) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations);
- (37) Subchapter R (sections 1352 to 1359) (with respect to election to determine corporate tax on certain international shipping activities using per ton rate);
- (38) Subchapter U (sections 1391 to 1397F) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E;
- (39) Subchapter W (sections 1400 to 1400C) (with respect to District of Columbia enterprise zone);
- (40) Section 1400O (with respect to education tax benefits);
- (41) Section 1400P (with respect to housing tax benefits);
- (42) Section 1400R (with respect to employment relief);
- (43) Section 1400T (with respect to special rules for mortgage revenue bonds);
- (44) Section 1400U-1 (with respect to allocation of recovery zone bonds);
- (45) Section 1400U-2 (with respect to recovery zone economic development bonds); and
- (46) Section 1400U-3 (with respect to recovery zone facility bonds)."

SECTION 3. Section 237-23, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) This chapter shall not apply to the following persons:

- (1) Public service companies as that term is defined in section 239-2, with respect to the gross income, either actual gross income or gross

- income estimated and adjusted, that is included in the measure of the tax imposed by chapter 239;
- (2) Public utilities owned and operated by the State or any county, or other political subdivision thereof;
 - (3) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services, or other benefits to the members of the societies, orders, or associations, and to their dependents;
 - (4) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended, as well as that of operating a prepaid legal services plan, as well as that of operating or managing a homeless facility, or any other program for the homeless authorized under part XVII of chapter 346;
 - (5) Business leagues, chambers of commerce, boards of trade, civic leagues, agricultural and horticultural organizations, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare that shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;
 - (6) Hospitals, infirmaries, and sanitarium;
 - (7) Companies that provide potable water to residential communities that lack any access to public utility water services and are tax exempt under section 501(c)(12) of the Internal Revenue Code of 1986, as amended;
 - [~~(7)~~] (8) Cooperative associations incorporated under chapter 421 or Code section 521 cooperatives which fully meet the requirements of section 421-23, except Code section 521 cooperatives need not be organized in Hawaii; provided that:
 - (A) The exemption shall apply only to the gross income derived from activities that are pursuant to purposes and powers authorized by chapter 421, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;
 - (B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all those persons shall be so taxable; and
 - (C) As used in this paragraph, "section 521 cooperatives" mean associations that qualify as a cooperative under section 521 (with respect to exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;
 - [~~(8)~~] (9) Persons affected with Hansen's disease and kokuas, with respect to business within the county of Kalawao;
 - [~~(9)~~] (10) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stock-

holder or individual; provided that the exemption shall apply only to the activities of those persons in the conduct of cemeteries and shall not apply to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of those persons; and

~~(10)~~ (11) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations.

(b) The exemptions enumerated in subsection (a)(3) to ~~[(6)]~~ (7) shall apply only:

(1) To those persons who shall have registered with the department of taxation by filing a written application for registration in such form as the department shall prescribe, shall have paid the registration fee of \$20, and shall have had the exemption allowed by the department or by a court or tribunal of competent jurisdiction upon appeal from any assessment resulting from disallowance of the exemption by the department;

(2) To activities from which no profit inures to the benefit of any private stockholder or individual, except for death or other benefits to the members of fraternal societies; and

(3) To the fraternal, religious, charitable, scientific, educational, communal, or social welfare activities of such persons, or to the activities of [such] hospitals, infirmaries, [and] sanitarium [as such], and potable water companies, and not to any activity the primary purpose of which is to produce income even though the income is to be used for or in furtherance of the exempt activities of such persons.

(c) To obtain allowance of an exemption:

(1) A person under subsection (a)(3) to ~~[(6);]~~ (7), who has received or applied for recognition of tax exempt status under section 501(c) (3), (4), (6), ~~[or] (8), or (12)~~ of the Internal Revenue Code of 1986, as amended, or who is a subordinate person of a person who has received a group exemption letter under section 501(c)(3), (4), (6), ~~[or] (8), or (12)~~ of the Internal Revenue Code of 1986, as amended, shall register with the department by filing a statement attaching a copy of the exemption or application for recognition of exempt status and any particular facts that the department may require; and

(2) All other persons under subsection (a)(3) to ~~[(6)]~~ (7) shall file an application for exemption in the form of an affidavit or affidavits setting forth in general all facts affecting the right to the exemption and [such] any particular facts [as] that the department may require, to which shall be attached [such] any records, papers, and other information as the department may prescribe.”

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

SECTION 5. This Act shall take effect upon its approval; provided that sections 2 and 3 shall apply to taxable years beginning after December 31, 2011.

(Approved June 28, 2012.)