

ACT 116

S.B. NO. 1202

A Bill for an Act Relating to Taxation.

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

SECTION 1. Chapter 243, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

~~“§243-~~ **Chapter 235 and chapter 237 applicable.** All of the provisions of chapters 235 and 237 not inconsistent with this chapter and that may appropriately be applied to the taxes, persons, circumstances, and situations involved in this chapter, including (without prejudice to the generality of the foregoing) provisions as to penalties and interest, and provisions granting administrative powers to the director of taxation, and provisions for the assessment, levy, and collection of taxes, shall be applicable to the taxes imposed by this chapter, and to the assessment, levy, and collection thereof.”

SECTION 2. Section 243-2, Hawaii Revised Statutes, is amended to read as follows:

“§243-2 Distributors to register and be licensed. (a) Every distributor, and any person before becoming a distributor, shall register as such with the department of taxation on forms to be prescribed, prepared, and furnished by the department and the department shall issue to such distributor a license which shall be valid until revoked by the department as hereinafter provided. ~~[However, distributors who cannot legally be required by the State to so register and be licensed, or to perform the duties required of distributors by any other provisions of this chapter, shall be deemed to be excluded from the operation of such provisions.]~~

(b) Any license issued under this chapter shall not be assignable and shall be conspicuously displayed on the licensed premises of the licensee. Whenever a license is defaced, destroyed, or lost, or the licensed premises are relocated,

the department may issue a duplicate license to the licensee upon the payment of a fee of 50 cents.

(c) The department may suspend or revoke any license issued under this chapter whenever the department finds that the licensee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes but is not limited to instances where an applicant or licensee has:

- (1) Submitted a false or fraudulent application or provided a false statement in an application;
- (2) Possessed or displayed a false or fraudulent license;
- (3) Failed to comply with, violated, or been convicted of violating any county, state, or federal law directly pertaining to the sale, importation, acquisition, possession, distribution, transportation, or smuggling of fuel, including petroleum products and alternative fuels; or
- (4) Failed to maintain complete and accurate records when and if required to be kept.

Upon suspending or revoking any license, the department may request that the licensee surrender the license or any duplicate issued to or printed by the licensee, and the licensee shall surrender the license or duplicate promptly to the department as requested.

(d) When the department suspends or revokes a license, the department shall immediately notify the licensee and afford the licensee a hearing, if requested; provided that a hearing has not already been afforded. The department shall provide no less than thirty days' notice to the licensee of a hearing afforded under this subsection. After the hearing, the department shall:

- (1) Rescind its order of suspension;
- (2) Continue the suspension;
- (3) Revoke the license; or
- (4) Rescind its order of revocation."

SECTION 3. Section 243-3, Hawaii Revised Statutes, is amended to read as follows:

“§243-3 Retail dealers, permits; certificates. (a) The certificate of a retail dealer as to the amount of the retail dealer's retail sales during the month, referred to in section 243-10, is of no validity unless at the time of making the certificate the retail dealer holds a permit from the department of taxation, which is then in effect. In order to obtain a permit, a retail dealer shall make an application to the department therefor, in such form as the department prescribes, and containing such information as the department requires.

(b) Any person who makes a false or fraudulent application or certificate or false statement in an application or certificate provided for by this chapter, with intent to defraud the State or to obtain, for a licensed distributor, an unauthorized credit, or who in any manner intentionally deceives or attempts to deceive the department in relation to an application or certificate provided for by this chapter, shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

(c) No permit shall be issued to a retail dealer unless the department is satisfied that:

- (1) The retail dealer, as to all of the liquid fuel purchased by the retail dealer from licensed distributors, is engaged exclusively in selling the same at retail, and is not using the liquid fuel for any other purpose;
- (2) The retail dealer maintains on the premises a pump or pumps drawing on tanks into which fuel is delivered by licensed distributors and

from which no liquid fuel is drawn by the retailer for any purpose other than the sale thereof at retail, and the retail dealer further maintains records showing the quantity of liquid fuel on hand in those tanks at the beginning and end of each month and the deliveries into those tanks made by licensed distributors during the month;
or

- (3) The retail dealer maintains records by which retail sales of liquid fuel purchased from licensed distributors are segregated from all other sales or uses of liquid fuel, and further showing the quantity of liquid fuel on hand at the beginning and end of each month and the purchases of liquid fuel from licensed distributors during the month.

(d) Permits to retail dealers shall be issued on an annual basis and shall expire at the end of each calendar year. A fee of \$5 shall be charged for each permit or renewal thereof. Permits shall be numbered and each certificate made by a retail dealer holding a permit shall bear the same identifying number as the permit which the retail dealer holds.

~~[(e) The department may revoke a permit upon the grounds hereinafter stated, after notice to the retail dealer holding the permit informing the retail dealer of the grounds of the proposed revocation and of the time and place at which a hearing will be held thereon. If the department finds, after the hearing, that there is good cause therefor it may revoke the permit. The permit may be revoked upon any of the following grounds:~~

- ~~(1) A false or fraudulent application or false statement in an application;~~
- ~~(2) The giving of a false or fraudulent certificate or a false statement in a certificate;~~
- ~~(3) Failure to maintain the practices or records required by paragraphs (1), (2), or (3) of subsection (c), whichever is applicable as shown by the retail dealer's application for the permit;~~
- ~~(4) Incomplete or inaccurate records when and if required to be kept.]~~
- ~~(e) Any entity that operates as a distributor and also sells fuel to consumers at retail shall acquire a separate retail dealer permit.~~

~~(f) Each retail dealer who holds a permit issued by the department [which] that remains in effect[,] may make a certificate showing the amount of retail sales, made by the retail dealer during the month, of liquid fuel purchased from a licensed distributor, and [further] may further furnish [such] the certificate to the licensed distributor from whom the retail dealer purchased the liquid fuel, for the retail dealer's use as provided, in section 243-10.~~

~~(g) A retail dealer permit shall be nonassignable and nontransferable from one entity to another entity. A retail dealer permit may be transferred from one business location to another business location after an application has been filed with the department requesting the transfer and approval has been obtained from the department.~~

~~(h) A retail dealer permit issued under this section shall be displayed at all times in a conspicuous place at the place of business requiring the permit.~~

~~(i) The department may suspend, revoke, or decline to renew any permit issued under this chapter whenever the department finds that the applicant or permittee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes but is not limited to instances where an applicant or permittee has:~~

- ~~(1) Submitted a false or fraudulent application or provided a false statement in an application;~~
- ~~(2) Possessed or displayed a false or fraudulent permit;~~

- (3) Provided a false or fraudulent certificate or made a false statement in a certificate;
- (4) Failed to comply with, violated, or been convicted of violating any county, state, or federal law directly pertaining to the sale, importation, acquisition, possession, distribution, transportation, or smuggling of fuel, including but not limited to petroleum products and alternative fuels; or
- (5) Failed to maintain complete and accurate records when and if required to be kept.

Upon suspending or revoking any permit, the department may request that the permittee surrender the permit or any duplicate issued to or printed by the permittee, and the permittee shall surrender the permit or duplicate promptly to the department as requested.

(j) When the department suspends, revokes, or declines to renew a permit, the department shall immediately notify the applicant or permittee and afford the applicant or permittee a hearing, if requested; provided that a hearing has not already been afforded. The department shall provide no less than thirty days' notice to the applicant or permittee of a hearing afforded under this subsection. After the hearing, the department shall:

- (1) Rescind its order of suspension;
- (2) Continue the suspension;
- (3) Revoke the permit;
- (4) Rescind its order of revocation;
- (5) Decline to renew the permit; or
- (6) Renew the permit.”

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),]~~ 243-4, on or before the twentieth day of each calendar month, shall file with the ~~[director of taxation,]~~ department, on forms prescribed~~[- prepared, and furnished]~~ by the ~~[director,]~~ department, 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; and
- (4) Additional information relative to the acquisition, purchase, manufacture, or importation into the State, and the sale, use, or other dis-

position, 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 payable for any month shall be delinquent after the expiration of the 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. All other information filed under this chapter and not expressly made public record under this section shall not be public records."

SECTION 5. Section 244D-1, Hawaii Revised Statutes, is amended by amending the definition of "dealer" to read as follows:

"“Dealer” means the holder of a manufacturer’s license, [a] wholesaler’s license, [or a] brewpub’s license, winery’s license, or small craft producer’s license under the liquor law.”

SECTION 6. Section 244D-2, Hawaii Revised Statutes, is amended to read as follows:

“[§244D-2] Permit. (a) It shall be unlawful for any dealer to sell liquor unless a permit has been issued to the dealer as hereinafter prescribed, and such permit is in full force and effect.

(b) The liquor commission shall certify to the department ~~[of taxation from time to time and within forty-eight hours after such license is issued]~~ the name of every dealer, together with the dealer's place of business and the period covered by the dealer's license. The department ~~[thereupon]~~ shall issue its permit to such person for the period covered by the person's license upon the payment of a permit fee of \$2.50. The permit shall be issued by the department as of the date when the liquor commission issued the license.

(c) Any permit issued under this chapter shall be for the period covered by dealer's license; it shall not be assignable; it shall be conspicuously displayed on the licensed premises of the permittee; it shall expire upon the expiration of the period covered by the permittee's license, or on June 30 next succeeding the date upon which it is issued, whichever is earlier, unless sooner suspended, surrendered, or revoked for good cause by the department; and it shall be renewed annually before July 1, upon fulfillment of all requirements as in the case of an original permit and the payment of a renewal fee of \$2.50. Whenever a permit is defaced, destroyed, or lost, or the licensed premises are relocated, the department may issue a duplicate permit to the permittee upon the payment of a fee of 50 cents.

~~(d) The department may suspend, or, after hearing, revoke, any permit issued under this chapter whenever it finds that the permittee has failed to comply with this chapter, or any rule or regulation of the department prescribed, adopted, and promulgated under this chapter. Upon suspending or revoking any permit the department shall request the permittee to surrender to it immediately the permit, or any duplicate thereof issued to the permittee, and the permittee shall surrender the same promptly to the department as requested.]~~

(d) The department may suspend, revoke, or decline to renew any permit issued under this chapter whenever the department finds that the applicant or permittee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes but is not limited to instances where an applicant or permittee has:

- (1) Submitted a false or fraudulent application or provided a false statement in an application;
- (2) Possessed or displayed a false or fraudulent permit;
- (3) Failed to comply with, violated, or been convicted of violating any county, state, or federal law directly pertaining to the sale, importation, acquisition, possession, distribution, transportation, or smuggling of liquor; or
- (4) Failed to maintain complete and accurate records when and if required to be kept.

Upon suspending or revoking any permit, the department may request that the permittee surrender the permit or any duplicate issued to, or printed by the permittee, and the permittee shall surrender the permit or duplicate promptly to the department as requested.

(e) Whenever the department suspends, revokes, or declines to renew a permit, [it] the department shall notify the applicant or permittee immediately and afford the applicant or permittee a hearing, if desired[-and if]; provided that a hearing has not already been afforded. The department shall provide no less than thirty days' notice to the applicant or permittee of a hearing afforded under this subsection. After the hearing the department shall [either rescind its order of suspension, or good cause appearing therefor, shall continue the suspension or revoke the permit.];

- (1) Rescind its order of suspension;
- (2) Continue the suspension;
- (3) Revoke the permit;
- (4) Rescind its order of revocation;
- (5) Decline to renew the permit; or
- (6) Renew the permit.”

SECTION 7. Section 245-2, Hawaii Revised Statutes, is amended to read as follows:

“§245-2 License. (a) It shall be unlawful for any person to engage in the business of a wholesaler or dealer in the State without having received first a license therefor issued by the department of taxation under this chapter; provided that this section shall not be construed to supersede any other law relating to licensing of persons in the same business.

(b) The license shall be issued by the department upon application therefor, in such form and manner as shall be required by rule of the department, and the payment of a fee of \$2.50, and shall be renewable annually on July 1 for the twelve months ending the succeeding June 30.

(c) Any license issued under this chapter shall not be assignable and shall be conspicuously displayed on the licensed premises of the licensee. Whenever a license is defaced, destroyed, or lost, or the licensed premises are relocated,

the department may issue a duplicate license to the licensee upon the payment of a fee of 50 cents.

~~[(e)]~~ (d) The department may suspend ~~[or, after hearing]~~, revoke, or decline to renew any license issued under this chapter whenever the department finds that the applicant or licensee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes but is not limited to instances where an applicant or licensee has:

- (1) Submitted a false or fraudulent application or provided a false statement in an application; ~~[or]~~
- (2) Possessed or displayed a false or fraudulent license~~[-]~~;
- (3) Failed to comply with, violated, or been convicted of violating any county, state, or federal law directly pertaining to the sale, importation, acquisition, possession, stamping, distribution, transportation, or smuggling of cigarettes, counterfeit cigarettes, counterfeit tax stamps, or other tobacco products; or
- (4) Failed to maintain complete and accurate records when and if required to be kept.

Upon suspending or revoking any license, the department ~~[shall]~~ may request that the licensee immediately surrender the license or any duplicate issued to or printed by the licensee, and the licensee shall surrender the license or duplicate promptly to the department as requested.

~~[(d)]~~ (e) Whenever the department suspends, revokes, or declines to renew a license, the department shall notify the applicant or licensee immediately and afford the applicant or licensee a hearing, if requested ~~[and if]~~; provided that a hearing has not already been afforded. The department shall provide no less than thirty days' notice to the applicant or licensee of a hearing afforded under this subsection. After the hearing, the department shall:

- (1) Rescind its order of suspension;
- (2) Continue the suspension;
- (3) Revoke the license;
- (4) Rescind its order of revocation;
- (5) Decline to renew the license; or
- (6) Renew the license.”

SECTION 8. Section 245-2.5, Hawaii Revised Statutes, is amended by amending subsections (m) and (n) to read as follows:

“(m) The department may suspend ~~[or, after hearing]~~, revoke, or decline to renew any retail tobacco permit issued under this chapter whenever the department finds that the applicant or permittee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes but is not limited to instances where an applicant or permittee has:

- (1) Submitted a false or fraudulent application or provided a false statement in an application; ~~[or]~~
- (2) Possessed or displayed a false or fraudulent retail tobacco permit~~[-]~~;
- (3) Failed to comply with, violated, or been convicted of violating any county, state, or federal law directly pertaining to the sale, importation, acquisition, possession, stamping, distribution, transportation, or smuggling of cigarettes, counterfeit cigarettes, counterfeit tax stamps, or other tobacco products; or
- (4) Failed to maintain complete and accurate records when and if required to be kept.

Upon suspending or revoking any retail tobacco permit, the department ~~[shall]~~ may request that the permittee immediately surrender any retail tobacco permit

or duplicate issued to or printed by the permittee, and the permittee shall surrender the permit or duplicate promptly to the department as requested.

(n) Whenever the department suspends, revokes, or declines to renew a retail tobacco permit, the department shall notify the applicant or permittee immediately and afford the applicant or permittee a hearing, if requested ~~[and if]~~; provided that a hearing has not already been afforded. The department shall provide no less than thirty days' notice to the applicant or permittee of a hearing afforded under this subsection. After the hearing, the department shall:

- (1) Rescind its order of suspension;
- (2) Continue the suspension;
- (3) Revoke the retail tobacco permit;
- (4) Rescind its order of revocation;
- (5) Decline to renew the retail tobacco permit; or
- (6) Renew the retail tobacco permit.”

SECTION 9. Section 245-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department and the attorney general may examine all records[~~including tax returns and reports under section 245-31,~~] required to be kept or filed under this chapter, and books, papers, and records of any person engaged in the business of wholesaling or dealing cigarettes and tobacco products, to verify the accuracy of the payment of the taxes imposed by this chapter. Every person in possession of any books, papers, and records, and the person’s agents and employees, are directed and required to give the department and the attorney general the means, facilities, and opportunities for the examinations.”

SECTION 10. Section 245-33, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§245-33]]~~ **Unused stamps; cancellation of stamps.** The department shall adopt rules for a refund or credit to a licensee in the amount of the denominated values less any discount applied pursuant to section 245-22(e) of any unused stamps. The department may provide by rule for the cancellation of stamps.”

SECTION 11. Section 243-8, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 245-31, Hawaii Revised Statutes, is repealed.

SECTION 13. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 15. This Act shall take effect on July 1, 2021.

(Approved June 28, 2021.)

Note

1. Edited pursuant to HRS §23G-16.5.