A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

SECTION 1. Section 231-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Director" means the director of taxation, unless the context clearly indicates otherwise."

SECTION 2. Section 243-1, Hawaii Revised Statutes, is amended by repealing the definition of "director."]

SECTION 3. Section 243-3.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Each distributor subject to the tax imposed by subsection (a) or (b), on or before the [last] twentieth day of each calendar month, shall file with the [director,] department, on forms prescribed[,- prepared, and furnished] by the [director,] department, a return statement of the tax under this section for which the distributor is liable for the preceding month. The form and payment of the tax shall be transmitted to the department [of taxation in the appropriate district]."

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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 twentieth day of each calendar month, shall file with the director of taxation, department, on forms prescribed, 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;

(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
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."

SECTION 5. Section 244D-2, Hawaii Revised Statutes, is
amended by amending subsections (b), (c), and (d) to read as
follows:

"[(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.

(b) Any permit issued under this chapter shall be for the period covered by dealer's license and 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
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.

c) 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. Whenever the department suspends a permit, it shall notify the permittee immediately and afford the permittee a hearing, if desired, and if a hearing has not already been afforded. 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."

SECTION 6. Section 244D-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every person who sells or uses any liquor in the State not taxable under this chapter, in respect of the transaction by which the person or the person's vendor acquired the liquor, shall pay a gallonage tax which is hereby imposed at the following rates for the various liquor categories defined in section 244D-1:

[For the period July 1, 1997, to June 30, 1998, the tax rate shall be:]

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(1) $5.92 per wine gallon on distilled spirits;
(2) $2.09 per wine gallon on sparkling wine;
(3) $1.36 per wine gallon on still wine;
(4) $0.84 per wine gallon on cooler beverages;
(5) $0.92 per wine gallon on beer other than draft beer;
(6) $0.53 per wine gallon on draft beer;

On July 1, 1998, and thereafter, the tax rate shall be:

(1) $5.98 per wine gallon on distilled spirits;
(2) $2.12 per wine gallon on sparkling wine;
(3) $1.38 per wine gallon on still wine;
(4) $0.85 per wine gallon on cooler beverages;
(5) $0.93 per wine gallon on beer other than draft beer;
(6) $0.54 per wine gallon on draft beer;
and at a proportionate rate for any other quantity so sold or used."

SECTION 7. Section 244D-6, Hawaii Revised Statutes, is amended to read as follows:

"§244D-6 Return, form, contents. Every taxpayer shall, on or before the 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 8. Section 245-2.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A permittee shall keep a complete and accurate record of the permittee's cigarette or tobacco product inventory. The records shall:

(1) Include:

(A) A written statement containing the name and address of the permittee's source of its cigarettes and tobacco products;
(B) The date of delivery, quantity, trade name or brand, and price of the cigarettes and tobacco products; and

(C) Documentation in the form of any purchase orders, invoices, bills of lading, other written statements, books, papers, or records in whatever format, including electronic format, which substantiate the purchase or acquisition of the cigarettes and tobacco products stored or offered for sale; and

(2) Be offered for inspection and examination within twenty-four hours of demand by the department or the attorney general, and shall be preserved for a period of [three] five years; provided that:

(A) Specified records may be destroyed if the department and the attorney general both consent to their destruction within the [three-year] five-year period; and

(B) Either the department or the attorney general may adopt rules pursuant to chapter 91 that require specified records to be kept longer than a period of [three] five years."

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SECTION 9. Section 245-9, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) 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.

(b) The department and the attorney general may inspect the operations, premises, and storage areas of any entity engaged in the sale of cigarettes, or the contents of a specific vending machine, during regular business hours. This inspection shall include inspection of all statements, books, papers, and records in whatever format, including electronic format, pertaining to the acquisition, possession, transportation, sale, or use of packages of cigarettes and tobacco products other than cigarettes, to verify the accuracy of the payment of taxes imposed by this chapter, and of the contents of cartons and
shipping or storage containers to ascertain that all individual packages of cigarettes have an affixed stamp of proper denomination as required by this chapter. This inspection may also verify that all stamps were produced under the authority of the department. Every entity in possession of any books, papers, and records, and the entity's agents and employees, are directed and required to give the department and the attorney general the means, facilities, and opportunities for the examinations. [For purposes of this chapter "entity" means one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity.]

SECTION 10. Section 245-41, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Where the attorney general [initiates and] conducts an investigation resulting in the imposition and collection of a criminal fine pursuant to this part, one hundred per cent of the fine shall be distributed to the attorney general to be deposited to the credit of the department of the attorney general's tobacco enforcement special fund; provided that if the attorney general engages the prosecuting attorney for the investigation or prosecution, or both, resulting in the imposition and collection of a criminal fine under this part,
the fine shall be shared equally between the attorney general and the prosecuting attorney."

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

[$243-8 License taxes payable monthly. License taxes imposed by this chapter shall be paid in monthly installments to the department of taxation.]

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

["$245-31 Monthly report on distributions of cigarettes and tobacco products, and purchases of stamps. (a) On or before the 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 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 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval.

INTRODUCED BY:

BY REQUEST
JAN 2 2 2019
Report Title:
Taxation

Description:
Makes various technical amendments to chapters 231, 243, 244D, and 245, Hawaii Revised Statutes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.
DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO TAXATION.

PURPOSE: To make technical amendments to Title 14, Hawaii Revised Statutes, to allow the Department of Taxation to more effectively administer the law and to more accurately reflect the Department's tax compliance process.

MEANS: Amends sections 231-1, 243-3.5(e), 243-10, 244D-2(b), (c), and (d), 244D-4(a), 244D-6, 245-2.5(l), 245-10(a) and (b), and 245-41(c), and repeals sections 243-8 and 245-31, Hawaii Revised Statutes.

JUSTIFICATION: Chapters 243, 244D, and 245, HRS, have not been reviewed for technical cleanup in many years. The Department, having reviewed them, believes the amendments contained in this bill add clarity to the law and allow for more effective administration. Amends section 231-1, Hawaii Revised Statutes (HRS), by adding a definition of the term "director." Amends section 243-1, HRS, by repealing the definition for "director." Amends section 243-3.5, HRS, to reflect that the current filing date is the twentieth day of the month rather than the final day of the month following the close of the taxable period, and to delete a subsection containing redundant language regarding allocation of tax revenue collected. Repeals section 243-8, HRS, which established the taxable period of the fuel license tax and amends section 243-10, HRS, to create the taxable period and also make other technical amendments. Amends section 244D-2, HRS, to remove unnecessary and onerous forty-eight hour notice requirements for the Department of Taxation and the county liquor commissions to communicate

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with each other. Additionally, makes amendments to clarify the period for which a liquor permit is valid. Amends section 244D-4, HRS, by deleting outdated tax rates. Amends section 244D-6, HRS, with technical, clarifying amendments. Amends section 245-2.5(1), HRS, by amending the recordkeeping requirements to reflect the five-year statute of limitations in chapter 245, HRS. Amends section 245-9, HRS, with technical and conforming amendments related to other amendments made by this bill. Repeals section 245-31, HRS. Amends section 245-41(c), HRS, with technical amendments. Because the Department of Taxation is currently updating its tax system with respect to these three tax chapters as part of its Tax System Modernization, these changes are especially relevant now.

Impact on the public: Adds clarity to the law. Requires retail tobacco permit holders to maintain records for period of five years instead of merely three.

Impact on the department and other agencies: This bill will allow the Department to more effectively administer the tax law, and more effectively program its system under the Tax Modernization System, due to the law being more clear.

GENERAL FUND: None.

OTHER FUNDS: None.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.