

JAN 24 2019

A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

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

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

8 [~~"Director" means the director of finance of the State."~~]

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

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

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

3 "§243-10 Statements and payments. Each distributor and
4 each person subject to section [~~243-4(b),~~] 243-4, on or before
5 the twentieth day of each calendar month, shall file with the
6 [~~director of taxation,~~] department, on forms prescribed[~~,~~
7 ~~prepared, and furnished~~] by the [~~director,~~] department, a
8 statement, authenticated as provided in section 231-15, showing
9 separately for each county and for the island of Lanai and the
10 island of Molokai within which and whereon fuel is sold or used
11 during each preceding month of the calendar year, the following:

12 (1) The total number of gallons of fuel refined,
13 manufactured, or compounded by the distributor or
14 person within the State and sold or used by the
15 distributor or person, and if for ultimate use in
16 another county or on either island, the name of that
17 county or island;

18 (2) The total number of gallons of fuel acquired by the
19 distributor or person during the month from persons
20 not subject to the tax on the transaction or only
21 subject to tax thereon at the rate of 1 cent per
22 gallon, as the case may be, and sold or used by the

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1 distributor or person, and if for ultimate use in
2 another county or on either island, the name of that
3 county or island;

4 (3) The total number of gallons of fuel sold by the
5 distributor or person to the United States or any
6 department or agency thereof, or to any other person
7 or entity, or used in any manner, the effect of which
8 sale or use is to exempt the fuel from the tax imposed
9 by this chapter;

10 (4) Additional information relative to the acquisition,
11 purchase, manufacture, or importation into the State,
12 and the sale, use, or other disposition, of diesel oil
13 by the distributor or person during the month, as the
14 department of taxation by rule shall prescribe.

15 At the time of submitting the foregoing report to the
16 department, each distributor and person shall pay the tax on
17 each gallon of fuel (including diesel oil) sold or used by the
18 distributor or person in each county and on the island of Lanai
19 and the island of Molokai during the preceding month, as shown
20 by the statement and required by this chapter; provided that the
21 tax shall not apply to any fuel exempted and so long as the same
22 is exempted from the imposition of the tax by the Constitution

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1 or laws of the United States; and the tax shall be paid only
2 once upon the same fuel; provided further that a licensed
3 distributor shall be entitled, in computing the tax the licensed
4 distributor is required to pay, to deduct from the gallons of
5 fuel reported for the month for each county or for the island of
6 Lanai or the island of Molokai, as the case may be, one gallon
7 for each ninety-nine gallons of like liquid fuel sold by retail
8 dealers in that county or on that island during the month, as
9 shown by certificates furnished by the retail dealers to the
10 distributor and attached to the distributor's report. All taxes
11 payable for any month shall be delinquent after the expiration
12 of the twentieth day of the following month.

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

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

19 "~~[(b) The liquor commission shall certify to the~~
20 ~~department of taxation from time to time and within forty eight~~
21 ~~hours after such license is issued the name of every dealer,~~
22 ~~together with the dealer's place of business and the period~~

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1 ~~covered by the dealer's license. The department thereupon shall~~
2 ~~issue its permit to such person for the period covered by the~~
3 ~~person's license upon the payment of a permit fee of \$2.50. The~~
4 ~~permit shall be issued by the department as of the date when the~~
5 ~~liquor commission issued the license.~~

6 ~~(e)]~~ (b) Any permit issued under this chapter shall be for
7 the period covered by dealer's license and shall not be
8 assignable; it shall be conspicuously displayed on the licensed
9 premises of the permittee; it shall expire upon the expiration
10 of the period covered by the permittee's license, or on June 30
11 next succeeding the date upon which it is issued, whichever is
12 earlier, unless sooner suspended, surrendered, or revoked for
13 cause by the department; and it shall be renewed annually before
14 July 1, upon fulfillment of all requirements as in the case of
15 an original permit and the payment of a renewal fee of
16 \$2.50. Whenever a permit is defaced, destroyed, or lost, or the
17 licensed premises are relocated, the department may issue a
18 duplicate permit to the permittee upon the payment of a fee of
19 50 cents.

20 ~~[(d)]~~ (c) The department may suspend, or, after hearing,
21 revoke, any permit issued under this chapter whenever it finds
22 that the permittee has failed to comply with this chapter, or

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1 any rule or regulation of the department prescribed, adopted,
2 and promulgated under this chapter. Upon suspending or revoking
3 any permit the department shall request the permittee to
4 surrender to it immediately the permit, or any duplicate thereof
5 issued to the permittee, and the permittee shall surrender the
6 same promptly to the department as requested. Whenever the
7 department suspends a permit, it shall notify the permittee
8 immediately and afford the permittee a hearing, if desired, and
9 if a hearing has not already been afforded. After the hearing
10 the department shall either rescind its order of suspension, or
11 good cause appearing therefor, shall continue the suspension or
12 revoke the permit."

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

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

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

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- 1 ~~(1) \$5.92 per wine gallon on distilled spirits;~~
- 2 ~~(2) \$2.09 per wine gallon on sparkling wine;~~
- 3 ~~(3) \$1.36 per wine gallon on still wine;~~
- 4 ~~(4) \$0.84 per wine gallon on cooler beverages;~~
- 5 ~~(5) \$0.92 per wine gallon on beer other than draft beer;~~
- 6 ~~(6) \$0.53 per wine gallon on draft beer;~~
- 7 ~~On July 1, 1998, and thereafter, the tax rate shall be:]~~

- 8 (1) \$5.98 per wine gallon on distilled spirits;
- 9 (2) \$2.12 per wine gallon on sparkling wine;
- 10 (3) \$1.38 per wine gallon on still wine;
- 11 (4) \$0.85 per wine gallon on cooler beverages;
- 12 (5) \$0.93 per wine gallon on beer other than draft beer;
- 13 (6) \$0.54 per wine gallon on draft beer;

14 and at a proportionate rate for any other quantity so sold or
15 used."

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

18 "**§244D-6 Return, form, contents.** Every taxpayer shall, on
19 or before the twentieth day of each month, file with the
20 department [~~of taxation in the taxation district in which the~~
21 ~~taxpayer's business premises are located, or with the department~~
22 ~~in Honolulu,]~~ a return showing all sales of liquor by gallonage

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1 and dollar volume in each liquor category defined in section
2 244D-1 and taxed under section 244D-4(a) made by the taxpayer
3 during the preceding month, showing separately the amount of the
4 nontaxable sales, and the amount of the taxable sales, and the
5 tax payable thereon. [~~The return shall also show the amount of~~
6 ~~liquor by gallonage and dollar volume in each liquor category~~
7 ~~defined in section 244D-1 and taxed under section 244D-4(a) used~~
8 ~~during the preceding month which is subject to tax, and the tax~~
9 ~~payable thereon.] The form of return shall be prescribed by the
10 department and shall contain such information as it may deem
11 necessary for the proper administration of this chapter."~~

12 SECTION 8. Section 245-2.5, Hawaii Revised Statutes, is
13 amended by amending subsection (1) to read as follows:

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

17 (1) Include:

18 (A) A written statement containing the name and
19 address of the permittee's source of its
20 cigarettes and tobacco products;

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- 1 (B) The date of delivery, quantity, trade name or
2 brand, and price of the cigarettes and tobacco
3 products; and
- 4 (C) Documentation in the form of any purchase orders,
5 invoices, bills of lading, other written
6 statements, books, papers, or records in whatever
7 format, including electronic format, which
8 substantiate the purchase or acquisition of the
9 cigarettes and tobacco products stored or offered
10 for sale; and
- 11 (2) Be offered for inspection and examination within
12 twenty-four hours of demand by the department or the
13 attorney general, and shall be preserved for a period
14 of [~~three~~] five years; provided that:
- 15 (A) Specified records may be destroyed if the
16 department and the attorney general both consent
17 to their destruction within the [~~three-year~~]
18 five-year period; and
- 19 (B) Either the department or the attorney general may
20 adopt rules pursuant to chapter 91 that require
21 specified records to be kept longer than a period
22 of [~~three~~] five years."

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1 SECTION 9. Section 245-9, Hawaii Revised Statutes, is
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) The department and the attorney general may examine
4 all records, including tax returns [~~and reports under section~~
5 ~~245-31~~], required to be kept or filed under this chapter, and
6 books, papers, and records of any person engaged in the business
7 of wholesaling or dealing cigarettes and tobacco products, to
8 verify the accuracy of the payment of the taxes imposed by this
9 chapter. Every person in possession of any books, papers, and
10 records, and the person's agents and employees, are directed and
11 required to give the department and the attorney general the
12 means, facilities, and opportunities for the examinations.

13 (b) The department and the attorney general may inspect
14 the operations, premises, and storage areas of any entity
15 engaged in the sale of cigarettes, or the contents of a specific
16 vending machine, during regular business hours. This inspection
17 shall include inspection of all statements, books, papers, and
18 records in whatever format, including electronic format,
19 pertaining to the acquisition, possession, transportation, sale,
20 or use of packages of cigarettes and tobacco products other than
21 cigarettes, to verify the accuracy of the payment of taxes
22 imposed by this chapter, and of the contents of cartons and

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1 shipping or storage containers to ascertain that all individual
2 packages of cigarettes have an affixed stamp of proper
3 denomination as required by this chapter. This inspection may
4 also verify that all stamps were produced under the authority of
5 the department. Every entity in possession of any books,
6 papers, and records, and the entity's agents and employees, are
7 directed and required to give the department and the attorney
8 general the means, facilities, and opportunities for the
9 examinations. [~~For purposes of this chapter "entity" means one~~
10 ~~or more individuals, a company, corporation, a partnership, an~~
11 ~~association, or any other type of legal entity.~~]"

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

14 "(c) Where the attorney general [~~initiates and~~] conducts
15 an investigation resulting in the imposition and collection of a
16 criminal fine pursuant to this part, one hundred per cent of the
17 fine shall be distributed to the attorney general to be
18 deposited to the credit of the department of the attorney
19 general's tobacco enforcement special fund; provided that if the
20 attorney general engages the prosecuting attorney for the
21 investigation or prosecution, or both, resulting in the
22 imposition and collection of a criminal fine under this part,

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1 the fine shall be shared equally between the attorney general
2 and the prosecuting attorney."

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

5 ~~[\$243-8 License taxes payable monthly. License taxes~~
6 ~~imposed by this chapter shall be paid in monthly installments to~~
7 ~~the department of taxation.]~~

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

10 ~~["\$245-31 Monthly report on distributions of cigarettes~~
11 ~~and tobacco products, and purchases of stamps. (a) On or~~
12 ~~before the twentieth day of each month, every licensee shall~~
13 ~~file on forms prescribed by the department:~~

14 ~~(1) A report of the licensee's distributions of cigarettes~~
15 ~~and purchases of stamps during the preceding month;~~
16 ~~and~~

17 ~~(2) Any other information that the department may require~~
18 ~~to carry out this part.~~

19 ~~(b) On or before the twentieth day of each month, every~~
20 ~~licensee shall file on forms prescribed by the department:~~

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1 ~~(1) A report of the licensee's distributions of tobacco~~
2 ~~products and the wholesale costs of tobacco products~~
3 ~~during the preceding month; and~~
4 ~~(2) Any other information that the department may require~~
5 ~~to carry out this part."]~~

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

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

INTRODUCED BY: 

BY REQUEST

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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.

JUSTIFICATION SHEET

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(1), 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

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.