

A Bill for an Act Relating to Taxation.

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

SECTION 1. Purpose of findings. The purpose of this Act is to correct an inequity in the application of the general excise tax on commissions of insurance general agents, subagents, and solicitors. The legislature finds that under present law insurance agents are prohibited from passing on the excise tax to their customers, while the other occupations which operate on a commission basis are allowed to pass on the tax. The direct result of this differential statutory treatment is that those occupations which can and do pass on the excise tax are subject to an actual burden of .15 per cent while insurance agents are subject to an actual tax burden of either 2 or 4 per cent. The legislature finds that this differential tax treatment is inequitable.

SECTION 2. Section 237-13, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 237-13 Imposition of tax. There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

(1) Tax on manufacturers.

- (A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared, for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.
- (B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.
- (C) If any person liable for the tax on manufacturers shall ship or transport his product, or any part thereof, out of the State, whether in a finished or unfinished condition, or shall sell the same for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment

of the tax imposed by this paragraph (1). This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department of taxation shall determine the basis for assessment, as provided by this paragraph, as follows:

- (i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, are the measure of the value of the products.
 - (ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining such values.
 - (iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make his returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce.
 - (iv) In all cases in which products leave the State in an unfinished condition the basis for assessment shall be adjusted so as to deduct such portion of the value as is attributable to the finishing of the goods outside the State.
- (2) Tax on business of selling tangible personal property; producing.
- (A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided[,] that insofar as certain retailing is taxed by section 237-16, the tax shall be that levied by section 237-16, and in the case of a wholesaler, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business. Upon every person engaging or continuing within this State in the business of a

producer the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1) (C) of this section.

- (B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the acts of the Congress of the United States which may be now in force or may be hereafter adopted; and whenever there occurs in the State an activity to which, under the Constitution and acts of Congress, there may be attributed gross proceeds of sales, such gross proceeds shall be so attributed.
- (C) No manufacturer or producer, engaged in such business in the State and selling his products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling his products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer as such.
- (D) When a manufacturer or producer, engaged in such business in the State, also is engaged in selling his products in the State at wholesale, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to him as well as the tax for the privilege of manufacturing or producing in the State, and he shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross proceeds of sales of his products required for the privilege of manufacturing or producing in the State. He shall pay the tax imposed in this chapter at the highest rate applicable for any of the privileges exercised by him in respect of the particular products, and the value or gross proceeds of sales of the products, thus subjected to tax at the highest rate, may be deducted insofar as duplicated as to the same products by the measure of tax upon him for the other privileges enumerated in this paragraph (2), paragraph (1), and section 237-16.
- (E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3) (C) of this section, and in any such case the tax shall be computed pursuant to the election, notwithstanding this paragraph (2) or paragraph (1) to the con-

trary.

- (F) The department, by regulation, may provide that a seller may take from the purchaser of tangible personal property a certificate, in such form as the department shall prescribe, certifying that the sale is a sale at wholesale. If the certificate is so provided for by regulation of the department:
 - (i) Any purchaser who shall furnish such a certificate shall be obligated to pay to the seller, upon demand, if the sale in fact is not at wholesale, the amount of the additional tax which by reason thereof is imposed upon the seller; and
 - (ii) The absence of such a certificate shall, unless the sales of the business are exclusively at wholesale, in itself give rise to the presumption that the sale is not at wholesale.
- (3) Tax upon contractors.
 - (A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business; provided[,] that insofar as the business of contracting is taxed by section 237-16, which relates to certain retailing, the tax shall be that levied by section 237-16.
 - (B) In computing the tax levied under this paragraph (3) or section 237-16, there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of the tax levied under paragraph (3) (A) or section 237-16, on another taxpayer who is a contractor, as defined, or who is a specialty contractor, duly licensed by the department of regulatory agencies pursuant to section 444-9, in respect of his business as such, if the tax on the amount so deducted has been paid by the other person, or has been withheld by the taxpayer and shall be paid over by him to the assessor at the time of filing the return, such withholding being hereby authorized; but any person claiming a deduction under this paragraph shall be required to show in his return the name of the person paying the tax on the amount deducted by him or from whom the tax was withheld, and shall issue a receipt for any amount of tax withheld, which upon filing by the other taxpayer with his return, shall relieve the other taxpayer of liability for the amount of tax withheld.
 - (C) In computing the tax levied under this paragraph (3) against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:
 - (i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction.
 - (ii) The taxpayer making the sale shall have certified to the department that he is taxable with respect to the gross

proceeds of the sale, and that he elects to have the tax on such gross income computed the same as upon a sale to the state government.

- (D) A person who, as a business or as a part of a business in which he is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by him (whether held as a leasehold, fee simple, or otherwise), shall upon the sale or other disposition of the land or improvements, even if the work was not done pursuant to a contract, be liable to the same tax as if engaged in the business of contracting, unless he shall show that at the time he was engaged in making the improvements it was, and for the period of at least one year after completion of the building, structure, or other improvements, it continued to be his purpose to hold and not to sell or otherwise dispose of the land or improvements. The tax in respect of the improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of such building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount which would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by paragraph (3) (B). Upon the election of the taxpayer this paragraph may be applied notwithstanding the improvements were not made by the taxpayer, or were not made as or as a part of a business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all such gross income shall be taxable under paragraph (10).
- (4) Tax upon theaters, amusements, radio broadcasting stations, etc. Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to four per cent of the gross income of the business.
- (5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by him.
- (6) Tax on service business. Upon every person engaging or continuing within the State in any service business or calling not otherwise

specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of any such business; provided, however, where any person engaging or continuing within the State in any service business or calling renders such services upon the order of or at the request of another taxpayer who is engaged in the service business and who, in fact, acts as or acts in the nature of an intermediary between the person rendering such services and the ultimate recipient of the benefits of such services, so much of the gross income as is received by the person rendering the services shall be subjected to the tax at the rate of one-half of one per cent and all of the gross income received by the intermediary from the principal shall be subjected to a tax at the rate of four per cent.

- (7) Tax on insurance solicitors[.] and agents. Upon every person engaged as a licensed solicitor, general agent, or subagent pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to [two] .15 per cent of the commissions due to such activity.
- (8) Professions. Upon every person engaging or continuing within the State in the practice of a profession, including those expounding the religious doctrines of any church, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income on the practice or exposition.
- (9) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or his legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received, provided that the tax levied hereunder on any amount so received and actually disbursed to another by such producer in the form of a benefit payment shall be paid by the person or persons to whom such amount is actually disbursed, and the producer actually making any such benefit payment to another shall be entitled to claim on his return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.
- (10) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income of gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted."

SECTION 3. Section 237-18, Hawaii Revised Statutes, is amended by

amending subsection (f) to read as follows:

“(f) Where insurance agents, including general agents, subagents, or solicitors, who are not employees and are licensed pursuant to chapter 431, or real estate brokers or salesmen, who are not employees and are licensed pursuant to chapter 467, produce commissions which are divided between such general agents, subagents, or solicitors, or between such real estate brokers or salesmen, as the case may be, the tax levied under section 237-13 (6) [.] or under section 237-16[,] as to real estate brokers or salesmen, or under section 237-13 (7) as to insurance general agents, subagents, or solicitors shall apply to each such person with respect to his portion of the commissions, and no more.”

SECTION 4. Section 431-318, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 431-318 Taxation.** (a) Each authorized insurer, except life insurers and ocean marine insurers, shall pay to the director of finance through the insurance commissioner, in the case of domestic insurers a tax of [2.6325] 2.9647 per cent, and in the case of other insurers a tax of [3.8025] 4.2824 per cent, on the gross premiums received from all risks or property resident, situated, or located within this State, during the year ending on the preceding December 31 less return premiums (but not including dividends paid or credited to policyholders), and less any reinsurance accepted (the tax upon such business being payable by the direct writing insurer).

All premiums written, procured, or received in the State shall be presumed to have been from risks or property resident, situated, or located within the State. This presumption may be rebutted as to any premium: (1) by showing that it has been properly allocated or apportioned and reported as a taxable premium of another state or other appropriate taxing authority; (2) by facts as to the residence, situation, or location of the risks or property, conclusively showing the nontaxability of the premium.

(b) Each life insurer shall pay to the director of finance[,] through the commissioner, in the case of domestic insurers a tax of [1.755] 1.918 per cent, and in the case of other insurers a tax of [2.925] 3.197 per cent, on the gross premiums received from all risks resident within this State, during the year ending on the preceding December 31, less return premiums, dividends paid or credited to policyholders, and reinsurance accepted (the tax upon such business being payable by the direct writing insurer).

The tax also shall apply to premiums for insurance written on individuals residing outside the State unless the direct writing insurer shall show the payment of a comparable tax to another appropriate taxing authority. Such showing may be required as to any premium written, procured, or received in the State.

(c) Each insurer shall, with respect to all ocean marine insurance contracts written within the State, during the year ending on the preceding December 31, pay to the director of finance through the commissioner a tax of .8775 per cent on its gross underwriting profit. The gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance ceded) on such ocean marine insurance contracts, the net losses paid (i.e., gross losses paid less salvage and recoveries on

reinsurance ceded) during such year under such contracts. In the case of an insurer issuing participating contracts, the gross underwriting profit shall not include, for computation of the tax prescribed by this subsection, the amount refunded, or paid as participation dividends, by such insurer to the holders of such contracts.

(d) No return premium shall be deductible unless the original gross premium, or an adjustment thereof, in an amount equal to or in excess of the return premium, has been concurrently or previously reported as taxable under this section or a prior similar law of the State.

(e) The tax shall be due and payable on March 15 succeeding the filing of the statement provided for in section 431-317. Any insurer failing or refusing to render the statement and to pay the required taxes above stated, for more than thirty days after the time so specified, shall be liable to a penalty of \$25 for each day of delinquency, and the taxes may be collected by distraint, and the penalty recovered by an action to be instituted by the commissioner in the name of this State, in any court of competent jurisdiction, and the commissioner may suspend the certificate of authority of the delinquent insurer until the taxes and fine, should any be imposed, are fully paid.

(f) For the calendar year 1976, and each calendar year thereafter, taxes imposed by subsections (a), (b), and (c) of this section shall be paid as follows:

- (1) Insurers whose annual tax liability for the preceding year was more than \$5,000 shall pay their taxes on a monthly basis. The taxes shall be due and payable on or before the last day of the calendar month following the month in which they accrue;
- (2) Insurers whose annual tax liability for the preceding year was more than \$1,000 and up to \$5,000 shall pay their taxes on a quarterly basis. The taxes shall be due and payable on or before the last day of the calendar month following the quarter in which they accrue; and
- (3) Insurers whose annual tax liability for the preceding year was \$1,000 or less shall pay their taxes as provided for in subsection (e) of this section.

In establishing the prepayment amount of an insurer who has acquired the business of another insurer, the amount of tax liability of the acquiring insurer for the preceding calendar year shall be deemed to include the amount of tax liability of the acquired insurer for that year.

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

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 annual tax and be allowed as a refund under section 431-319. Any insurer failing to pay taxes when due and payable, shall be liable to a penalty of \$25 for each day of delinquency, and the taxes may be collected by distraint, and the penalty recovered by an action to be instituted by the commissioner in the name of the State, in any court of competent jurisdiction, and the commissioner may suspend the certificate of authority of the delinquent insurer until the taxes and fine, should be imposed, are fully paid."

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.

SECTION 6. This Act shall take effect on January 1, 1979 and the rates as increased by section 4 of this Act shall apply to all premiums and gross underwriting profit received during the calendar year 1979 and thereafter.

(Approved May 31, 1978.)