
A BILL FOR AN ACT

RELATING TO THE PUBLIC SERVICE COMPANY TAX.

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

1 SECTION 1. The purpose of this Act is to address the
2 public service company tax. More specifically, this Act
3 temporarily increases the tax rate applicable to public
4 utilities.

5 SECTION 2. Section 239-5, Hawaii Revised Statutes, is
6 amended by amending subsections (a) and (b) to read as follows:

7 "(a) There shall be levied and assessed upon each public
8 utility, except airlines, motor carriers, common carriers by
9 water, and contract carriers taxed by section 239-6, a tax of
10 such rate per cent of its gross income each year from its public
11 utility business as shall be determined in the manner
12 hereinafter provided. The tax imposed by this section is in
13 lieu of all taxes other than those below set out, and is a means
14 of taxing the personal property of the public utility, tangible
15 and intangible, including going concern value. In addition to
16 the tax imposed by this chapter there also are imposed income
17 taxes, the specific taxes imposed by chapter 249, the fees
18 prescribed by chapter 269, any tax specifically imposed by the



1 terms of the public utility's franchise or under chapter 240,
2 the use or consumption tax imposed by chapter 238, and
3 employment taxes.

4 The rate of the tax upon the gross income of the public
5 utility shall be [~~four~~] five per cent; provided that if:

6 (1) A county provides by ordinance for a real property tax
7 exemption for real property used by a public utility
8 in its public utility business and owned by the public
9 utility (or leased to it by a lease under which the
10 public utility is required to pay the taxes upon the
11 property), and

12 (2) The county has not denied the exemption to the public
13 utility, but excluding a denial based upon a dispute
14 as to the ownership, lease, or use of a specific
15 parcel of real property,

16 then there shall be levied and assessed a tax in excess of the
17 [~~four~~] five per cent rate determined in the manner hereinafter
18 provided upon the gross income allocable to [~~such~~] that county.

19 The revenues generated from the tax in excess of the [~~four~~] five
20 per cent rate hereinbefore established shall be paid by the
21 public utility directly to [~~such~~] the county based upon the
22 proportion of gross income from its public utility business



1 attributable to [~~such~~] the county, based upon the allocation
2 made in the public utility's filings with the State of Hawaii;
3 provided that if the gross income from the public utility
4 business attributable to [~~such~~] the county is not so allocated
5 in the public utility's State filings, then the gross income
6 from the public utility business shall be equitably allocated to
7 each county. The relative number of access lines in each county
8 shall be deemed an acceptable basis of equitable allocation for
9 telecommunication companies.

10 The rate of the tax in excess of the [~~four~~] five per cent
11 rate hereinbefore established upon the gross income from the
12 public utility business shall be determined as follows:

13 If the ratio of the net income of the company to its gross
14 income is fifteen per cent or less, the rate of tax in excess of
15 the [~~four~~] five per cent rate on gross income shall be 1.885 per
16 cent; for all companies having net income in excess of fifteen
17 per cent of the gross, the rate of the tax on gross income shall
18 increase continuously in proportion to the increase in ratio of
19 net income to gross, at such rate that for each increase of one
20 per cent in the ratio of net income to gross, there shall be an
21 increase of .2675 per cent in the rate of the tax.



1 The following formula may be used to determine the rate, in
2 which formula the term "R" is the ratio of net income to gross
3 income, and "X" is the required rate of the tax on gross income
4 for the utility in question:

$$5 \qquad \qquad \qquad X = (26.75R - 2.1275)\%;$$

6 provided that in no case governed by the formula shall "X" be
7 less than 1.885 per cent or more than 4.2 per cent.

8 However, if the gross income is apportioned under section
9 239-8(b) or (c), there shall be no adjustment of the rate of tax
10 on the amount of gross income so apportioned to the State on
11 account of the ratio of the net income to the gross income being
12 in excess of fifteen per cent, and it shall be assumed in such
13 case that the ratio is fifteen per cent or less.

14 (b) Notwithstanding subsection (a); the rate of the tax
15 upon the portion of the gross income of a carrier of passengers
16 by land which consists in passenger fares for transportation
17 between points on a scheduled route, shall be [~~5.35~~] 6.35 per
18 cent. However, if the carrier has other public utility gross
19 income the fares nevertheless shall be included in applying
20 subsection (a) in determining the rate of tax upon the other
21 public utility gross income."



1 SECTION 3. Section 239-7, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) The tax imposed by this chapter shall be assessed
5 against each public service company in the manner provided by
6 this chapter, and shall be paid to the department of taxation at
7 the times and in the manner (in installments or otherwise)
8 provided by this section, except as provided in section 239-
9 5(a), where there is levied and assessed a tax in excess of
10 [~~four~~] five per cent upon gross income, the revenues generated
11 from the tax in excess of the [~~four~~] five per cent rate shall be
12 paid to the respective county director of finance at the times
13 and in the manner (in installments or otherwise) provided by
14 this section."

15 2. By amending subsection (c) to read:

16 "(c) The department shall prescribe the forms in which
17 returns shall be made so as to reflect clearly the liability of
18 each public service company subject to this tax, and may provide
19 in the forms for such additional information as it may deem
20 necessary. All provisions of the laws, not inapplicable and not
21 inconsistent with this chapter, relating to returns for income
22 tax purposes, the assessment (including additional assessments),



1 collection, and payment (in installments or otherwise) of income
2 taxes and the powers and duties of the department and the state
3 director of finance in connection therewith, and relating to
4 appeals from or other adjustments of such assessments,
5 limitation periods for assessments, enforcement of attendance of
6 witnesses, and the production of evidence, examination of
7 witnesses and records, the effect of assessments, tax books, and
8 lists and other official tax records as evidence, delinquent
9 dates and penalties, and the rights and liabilities (civil and
10 criminal) of taxpayers and other persons in connection with any
11 matters dealt with by chapter 235, are made applicable (1) to
12 the taxes and the assessment, payment, and collection thereof,
13 provided by this chapter, and (2) to the department and the
14 state director of finance in connection with the taxes and the
15 assessment, payment, or enforcement of payment and collection
16 thereof, and (3) to taxpayers and other persons affected by this
17 chapter, as the case may be. The provisions of chapter 235
18 regarding the limitation period for assessment and refunds shall
19 run from the filing of the return for the taxable year, or the
20 due date prescribed for the filing of the return, whichever is
21 later. With respect to payments due to a county of the revenues
22 generated from the tax in excess of the [~~four~~] five per cent



1 rate imposed under section 239-5(a), a county director of
2 finance shall be afforded [~~such~~] the rights and procedures of
3 the department in the enforcement of payment and collection of
4 the taxes assessed and levied under this chapter."

5 SECTION 4. Section 239-9, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) First year of doing business. The measure of the tax
8 for the year in which the company begins business is an estimate
9 of the gross income of the public service company for that year
10 or for the part of that year in which it is in business.

11 The tax thereon for the year in which the company begins
12 business shall be at the following rate:

13 (1) If subsection (a)(2) applies, at the rate of
14 [~~four~~] five per cent, or

15 (2) If subsection (a)(1) applies but the company though in
16 business at the commencement of the calendar year was
17 not in business during any part of the preceding year,
18 the tax shall be at the rate provided by sections 239-
19 5 and 239-6, except that there shall be no adjustment
20 of the rate of tax on account of the ratio of the net
21 income to the gross income being in excess of fifteen
22 per cent and it shall be assumed for purposes of this



1 subsection and subsection (e) that the ratio is
2 fifteen per cent or less.

3 The estimate shall be made and the tax returned on or
4 before the twentieth day of the third month after the month in
5 which the company begins business and shall be subject to
6 adjustment by the filing of an amended return as provided in
7 subsection (e). Payment of the tax shall accompany the return
8 unless time for payment is extended by the director of taxation.
9 The extension may be granted by the director in order to provide
10 for payment of the tax in installments during the remainder of
11 the taxable year."

12 SECTION 5. Section 239-10, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§239-10 Disposition of revenues.** All taxes collected
15 under this chapter shall be state realizations; provided that
16 where a tax in excess of the [~~four~~] five per cent rate upon
17 gross income is levied and assessed under section 239-5(a),
18 [~~such~~] the tax revenues to be paid to the county shall be
19 realizations of [~~such~~] that county."

20 SECTION 6. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect on July 1, 2010, and
2 shall be repealed on June 30, 2015; provided that sections 239-
3 5, 239-7, 239-9, and 239-10, Hawaii Revised Statutes, shall be
4 reenacted on June 30, 2015, in the form in which they read on
5 the day prior to the effective date of this Act.

6

INTRODUCED BY:

Calvin K. Iy

JAN 27 2010



Report Title:

Public Service Company Tax Rate; Increase

Description:

Increases the public service company tax rate applicable to public utilities. Takes effect on 07/01/10, and sunsets on 06/30/15.

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