



GOV. MSG. NO. 1287

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 28, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

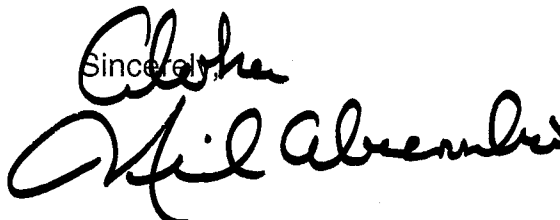
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 28, 2012, the following bill was signed into law:

HB1705 HD1 SD1 CD1

RELATING TO TAXATION.
Act 184 (12)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor
on JUN 28 2012

ORIGINAL

1705
H.B. NO. 184

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

H.B. NO. 1705
H.D. 1
S.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that residents in certain
2 rural areas in the State do not have access to public utility
3 water services. The legislature also finds that in some of
4 these unserved areas, private nonprofit companies, such as Napu'u
5 Water, Inc., have been established for the sole purpose of
6 supplying potable water to the community. Although these
7 companies are federally tax-exempt under section 501(c)(12) of
8 the Internal Revenue Code, they are still subject to the state
9 income and general excise taxes. The legislature further finds
10 that, in the interests of fairness and equity, nonprofit
11 companies that are operated exclusively to supply potable water
12 to communities that lack any access to public utility water
13 services should receive the same tax treatment as water
14 companies owned by a county or municipality.

15 The purpose of this Act is to exempt from the state income
16 and general excise taxes, privately-owned nonprofit public water
17 systems that supply potable water to residential communities
18 that lack any access to public utility water services and are

HB1705 CD1 HMS 2012-3780



1 federally tax-exempt under section 501(c)(12) of the Internal
2 Revenue Code.

3 SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) The following Internal Revenue Code subchapters,
6 parts of subchapters, sections, subsections, and parts of
7 subsections shall not be operative for the purposes of this
8 chapter, unless otherwise provided:

9 (1) Subchapter A (sections 1 to 59A) (with respect to
10 determination of tax liability), except section
11 1(h)(2) (relating to net capital gain reduced by the
12 amount taken into account as investment income),
13 except sections 2(a), 2(b), and 2(c) (with respect to
14 the definition of "surviving spouse" and "head of
15 household"), except section 41 (with respect to the
16 credit for increasing research activities), except
17 section 42 (with respect to low-income housing
18 credit), except sections 47 and 48, as amended, as of
19 December 31, 1984 (with respect to certain depreciable
20 tangible personal property), and except section
21 48(d)(3), as amended, as of February 17, 2009 (with
22 respect to the treatment of United States Department



1 of Treasury grants made under section 1603 of the
2 American Recovery and Reinvestment Tax Act of 2009).
3 For treatment, see sections 235-110.91, 235-110.7, and
4 235-110.8;

5 (2) Section 78 (with respect to dividends received from
6 certain foreign corporations by domestic corporations
7 choosing foreign tax credit);

8 (3) Section 86 (with respect to social security and tier 1
9 railroad retirement benefits);

10 (4) Section 103 (with respect to interest on state and
11 local bonds). For treatment, see section 235-7(b);

12 (5) Section 114 (with respect to extraterritorial income).

13 For treatment, any transaction as specified in the
14 transitional rule for 2005 and 2006 as specified in
15 the American Jobs Creation Act of 2004 section 101(d)
16 and any transaction that has occurred pursuant to a
17 binding contract as specified in the American Jobs
18 Creation Act of 2004 section 101(f) are inoperative;

19 (6) Section 120 (with respect to amounts received under
20 qualified group legal services plans). For treatment,
21 see section 235-7(a)(9) to (11);



- 1 (7) Section 122 (with respect to certain reduced uniformed
2 services retirement pay). For treatment, see section
3 235-7(a)(3);
- 4 (8) Section 135 (with respect to income from United States
5 savings bonds used to pay higher education tuition and
6 fees). For treatment, see section 235-7(a)(1);
- 7 (9) Section 139C (with respect to COBRA premium
8 assistance);
- 9 (10) Subchapter B (sections 141 to 150) (with respect to
10 tax exemption requirements for state and local bonds);
- 11 (11) Section 151 (with respect to allowance of deductions
12 for personal exemptions). For treatment, see section
13 235-54;
- 14 (12) Section 179B (with respect to expensing of capital
15 costs incurred in complying with Environmental
16 Protection Agency sulphur regulations);
- 17 (13) Section 181 (with respect to special rules for certain
18 film and television productions);
- 19 (14) Section 196 (with respect to deduction for certain
20 unused investment credits);
- 21 (15) Section 199 (with respect to the U.S. production
22 activities deduction);



- 1 (16) Section 222 (with respect to qualified tuition and
2 related expenses);
- 3 (17) Sections 241 to 247 (with respect to special
4 deductions for corporations). For treatment, see
5 section 235-7(c);
- 6 (18) Section 280C (with respect to certain expenses for
7 which credits are allowable). For treatment, see
8 section 235-110.91;
- 9 (19) Section 291 (with respect to special rules relating to
10 corporate preference items);
- 11 (20) Section 367 (with respect to foreign corporations);
- 12 (21) Section 501(c)(12), (15), (16) (with respect to exempt
13 organizations); except that section 501(c)(12) shall
14 be operative for companies that provide potable water
15 to residential communities that lack any access to
16 public utility water services;
- 17 (22) Section 515 (with respect to taxes of foreign
18 countries and possessions of the United States);
- 19 (23) Subchapter G (sections 531 to 565) (with respect to
20 corporations used to avoid income tax on
21 shareholders);



- 1 (24) Subchapter H (sections 581 to 597) (with respect to
2 banking institutions), except section 584 (with
3 respect to common trust funds). For treatment, see
4 chapter 241;
- 5 (25) Section 642(a) and (b) (with respect to special rules
6 for credits and deductions applicable to trusts). For
7 treatment, see sections 235-54(b) and 235-55;
- 8 (26) Section 646 (with respect to tax treatment of electing
9 Alaska Native settlement trusts);
- 10 (27) Section 668 (with respect to interest charge on
11 accumulation distributions from foreign trusts);
- 12 (28) Subchapter L (sections 801 to 848) (with respect to
13 insurance companies). For treatment, see sections
14 431:7-202 and 431:7-204;
- 15 (29) Section 853 (with respect to foreign tax credit
16 allowed to shareholders). For treatment, see section
17 235-55;
- 18 (30) Section 853A (with respect to credits from tax credit
19 bonds allowed to shareholders);
- 20 (31) Subchapter N (sections 861 to 999) (with respect to
21 tax based on income from sources within or without the
22 United States), except sections 985 to 989 (with



- 1 respect to foreign currency transactions). For
2 treatment, see sections 235-4, 235-5, and 235-7(b),
3 and 235-55;
- 4 (32) Section 1042(g) (with respect to sales of stock in
5 agricultural refiners and processors to eligible farm
6 cooperatives);
- 7 (33) Section 1055 (with respect to redeemable ground
8 rents);
- 9 (34) Section 1057 (with respect to election to treat
10 transfer to foreign trust, etc., as taxable exchange);
- 11 (35) Sections 1291 to 1298 (with respect to treatment of
12 passive foreign investment companies);
- 13 (36) Subchapter Q (sections 1311 to 1351) (with respect to
14 readjustment of tax between years and special
15 limitations);
- 16 (37) Subchapter R (sections 1352 to 1359) (with respect to
17 election to determine corporate tax on certain
18 international shipping activities using per ton rate);
- 19 (38) Subchapter U (sections 1391 to 1397F) (with respect to
20 designation and treatment of empowerment zones,
21 enterprise communities, and rural development
22 investment areas). For treatment, see chapter 209E;



1 (39) Subchapter W (sections 1400 to 1400C) (with respect to
2 District of Columbia enterprise zone);

3 (40) Section 14000 (with respect to education tax
4 benefits);

5 (41) Section 1400P (with respect to housing tax benefits);

6 (42) Section 1400R (with respect to employment relief);

7 (43) Section 1400T (with respect to special rules for
8 mortgage revenue bonds);

9 (44) Section 1400U-1 (with respect to allocation of
10 recovery zone bonds);

11 (45) Section 1400U-2 (with respect to recovery zone
12 economic development bonds); and

13 (46) Section 1400U-3 (with respect to recovery zone
14 facility bonds)."

15 SECTION 3. Section 237-23, Hawaii Revised Statutes, is
16 amended by amending subsections (a), (b), and (c) to read as
17 follows:

18 "(a) This chapter shall not apply to the following
19 persons:

20 (1) Public service companies as that term is defined in
21 section 239-2, with respect to the gross income,
22 either actual gross income or gross income estimated



1 and adjusted, that is included in the measure of the
2 tax imposed by chapter 239;

3 (2) Public utilities owned and operated by the State or
4 any county, or other political subdivision thereof;

5 (3) Fraternal benefit societies, orders, or associations,
6 operating under the lodge system, or for the exclusive
7 benefit of the members of the fraternity itself,
8 operating under the lodge system, and providing for
9 the payment of death, sick, accident, prepaid legal
10 services, or other benefits to the members of the
11 societies, orders, or associations, and to their
12 dependents;

13 (4) Corporations, associations, trusts, or societies
14 organized and operated exclusively for religious,
15 charitable, scientific, or educational purposes, as
16 well as that of operating senior citizens housing
17 facilities qualifying for a loan under the laws of the
18 United States as authorized by section 202 of the
19 Housing Act of 1959, as amended, as well as that of
20 operating a prepaid legal services plan, as well as
21 that of operating or managing a homeless facility, or

1 any other program for the homeless authorized under
2 part XVII of chapter 346;

3 (5) Business leagues, chambers of commerce, boards of
4 trade, civic leagues, agricultural and horticultural
5 organizations, and organizations operated exclusively
6 for the benefit of the community and for the promotion
7 of social welfare that shall include the operation of
8 a prepaid legal service plan, and from which no profit
9 inures to the benefit of any private stockholder or
10 individual;

11 (6) Hospitals, infirmaries, and sanitararia;

12 (7) Companies that provide potable water to residential
13 communities that lack any access to public utility
14 water services and are tax exempt under section
15 501(c)(12) of the Internal Revenue Code of 1986, as
16 amended;

17 [~~7~~] (8) Cooperative associations incorporated under
18 chapter 421 or Code section 521 cooperatives which
19 fully meet the requirements of section 421-23, except
20 Code section 521 cooperatives need not be organized in
21 Hawaii; provided that:



- 1 (A) The exemption shall apply only to the gross
2 income derived from activities that are pursuant
3 to purposes and powers authorized by chapter 421,
4 except those provisions pertaining to or
5 requiring corporate organization in Hawaii do not
6 apply to Code section 521 cooperatives;
- 7 (B) The exemption shall not relieve any person who
8 receives any proceeds of sale from the
9 association of the duty of returning and paying
10 the tax on the total gross proceeds of the sales
11 on account of which the payment was made, in the
12 same amount and at the same rate as would apply
13 thereto had the sales been made directly by the
14 person, and all those persons shall be so
15 taxable; and
- 16 (C) As used in this paragraph, "section 521
17 cooperatives" mean associations that qualify as a
18 cooperative under section 521 (with respect to
19 exemption of farmers' cooperatives from tax) of
20 the Internal Revenue Code of 1986, as amended;



1 [~~8~~] (9) Persons affected with Hansen's disease and
2 kokuas, with respect to business within the county of
3 Kalawao;

4 [~~9~~] (10) Corporations, companies, associations, or trusts
5 organized for the establishment and conduct of
6 cemeteries no part of the net earnings of which inures
7 to the financial benefit of any private stockholder or
8 individual; provided that the exemption shall apply
9 only to the activities of those persons in the conduct
10 of cemeteries and shall not apply to any activity the
11 primary purpose of which is to produce income, even
12 though the income is to be used for or in the
13 furtherance of the exempt activities of those persons;
14 and

15 [~~10~~] (11) Nonprofit shippers associations operating under
16 part 296 of the Civil Aeronautics Board Economic
17 Regulations.

18 (b) The exemptions enumerated in subsection (a)(3) to

19 [~~6~~] (7) shall apply only:

20 (1) To those persons who shall have registered with the
21 department of taxation by filing a written application
22 for registration in such form as the department shall



1 prescribe, shall have paid the registration fee of
2 \$20, and shall have had the exemption allowed by the
3 department or by a court or tribunal of competent
4 jurisdiction upon appeal from any assessment resulting
5 from disallowance of the exemption by the department;

6 (2) To activities from which no profit inures to the
7 benefit of any private stockholder or individual,
8 except for death or other benefits to the members of
9 fraternal societies; and

10 (3) To the fraternal, religious, charitable, scientific,
11 educational, communal, or social welfare activities of
12 such persons, or to the activities of [~~such~~]
13 hospitals, infirmaries, [~~and~~] sanitarium [~~as such~~], and
14 potable water companies, and not to any activity the
15 primary purpose of which is to produce income even
16 though the income is to be used for or in furtherance
17 of the exempt activities of such persons.

18 (c) To obtain allowance of an exemption:

19 (1) A person under subsection (a) (3) to [~~(6)~~] (7), who
20 has received or applied for recognition of tax exempt
21 status under section 501(c) (3), (4), (6), [~~or~~] (8), or
22 (12) of the Internal Revenue Code of 1986, as amended,



1 or who is a subordinate person of a person who has
 2 received a group exemption letter under section
 3 501(c)(3), (4), (6), [~~or~~] (8), or (12) of the Internal
 4 Revenue Code of 1986, as amended, shall register with
 5 the department by filing a statement attaching a copy
 6 of the exemption or application for recognition of
 7 exempt status and any particular facts that the
 8 department may require; and

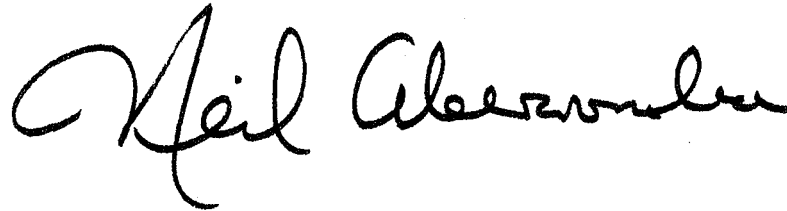
9 (2) All other persons under subsection (a)(3) to [~~+(6)~~] (7)
 10 shall file an application for exemption in the form of
 11 an affidavit or affidavits setting forth in general
 12 all facts affecting the right to the exemption and
 13 [~~such~~] any particular facts [~~as~~] that the department
 14 may require, to which shall be attached [~~such~~] any
 15 records, papers, and other information as the
 16 department may prescribe."

17 SECTION 4. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act shall take effect upon its approval;
 20 provided that sections 2 and 3 shall apply to taxable years
 21 beginning after December 31, 2011.

H.B. NO. 1705
H.D. 1
S.D. 1
C.D. 1

APPROVED this 28 day of JUN , 2012

A handwritten signature in black ink, reading "Neil Abernethy". The signature is written in a cursive style with a large initial "N".

GOVERNOR OF THE STATE OF HAWAII