

**"CHAPTER 243
FUEL TAX LAW**

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" **§243-1 Definitions.** Whenever used in this chapter:

"Alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing eighty-five per cent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; biodiesel; mixtures containing twenty per cent or more by volume of biodiesel with diesel or other fuels; fuels (other than alcohol) derived from biological materials; and any other fuel that is substantially not a petroleum product and that the governor determines would yield substantial energy security benefits or substantial environmental benefits.

"Aviation fuel" means all liquid substances of whatever chemical composition usable for the propulsion of airplanes.

"Barrel" means forty-two United States gallons of crude oil or petroleum product.

"Crude oil" means petroleum in an unrefined state or natural state, including condensates and natural gasoline.

"Director" means the director of finance of the State.

"Distributor" means:

- (1) Every person who refines, manufactures, produces, or compounds liquid fuel or fossil fuel in the State and sells or uses the same therein;
- (2) Every person who imports or causes to be imported into the State any liquid fuel or fossil fuel and sells it therein, whether in the original packages or containers in which it is imported or otherwise than in the original packages or containers, or who imports any liquid fuel or fossil fuel for the person's own use in the State;
- (3) Every person who acquires liquid fuel or fossil fuel from a person not a licensed distributor and sells or uses it, whether in the original package or container in which it was imported (if imported) or otherwise than in the original package or container; and
- (4) Every person who acquires liquid fuel or fossil fuel from a licensed distributor as a wholesaler thereof and sells or uses it.

"End user" means any person or government entity who acquires petroleum products for their own use and not for resale.

"Liquid fuel" or "fuel" means all liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power and includes liquefied petroleum gases, all distillates of and condensates from petroleum, natural gas, coal, coal tar, and vegetable ferments, such distillates and condensates being ordinarily designated as

a gasoline, naphtha, benzol, benzine, and alcohols so usable but not restricted to such designation. All aviation fuel that is sold for use in or used for airplanes is deemed to be "liquid fuel" or "fuel" whether or not coming within the definition contained in the foregoing sentence.

"Month" or "calendar month" means each full month of the calendar year; provided that whenever the books of any distributor in any county are kept on such a basis that its monthly records are made up on a basis other than a calendar month so that each business month of the distributor ends on some other day than the last day of the calendar month, and the distributor presents a sworn application to the department of taxation setting forth such facts and requesting that it be granted the privilege of making returns and paying the taxes and performing other duties required of it under this chapter upon the basis of such business month rather than a calendar month, the department shall in writing grant such privilege and thereupon, as to such distributor, the terms "month" or "calendar month" shall be deemed to mean and refer to such business month, and all returns and payments under this chapter shall be made upon the basis of such business month and all delinquencies and penalties shall attach and be calculated as of the last day of such business month.

"Person", except where the context or sense otherwise requires, means individuals, firms, associations, corporations, trusts, estates, partnerships, or other entities.

"Petroleum product" means any liquid hydrocarbon at standard temperature and pressure that is the product of the fractionalization, distillation, or other refining or processing of crude oil.

"Power-generating facility" means any electricity-generating facility that requires a permit issued under the federal Clean Air Act (42 U.S.C. 7401 through 7671q), the Hawaii air pollution control law (chapter 342B), or both.

"Retail dealer" means a person who purchases liquid fuel from a licensed distributor and sells the liquid fuel at retail. Only sales of liquid fuel for consumption or used by the purchaser, and not for resale, are sales at retail.

"Use", either as a noun or verb, and derivative expressions, means distribution or other disposition of fuel, or any other use thereof, whether with or without compensation. [L 1932 1st, c 19, §1; am L 1933, c 133, §1; RL 1935, §2010; am L Sp 1941, c 26, pt of §1; RL 1945, §5401; am L 1951, c 136, §1 and c 187, §1; RL 1955, §123-1; am L 1957, c 217, §1 and c 322, §1; am L Sp 1959 2d, c 1, §§14, 16; am L 1963, c 114, §1; HRS §243-1; gen ch 1985; am L 1991, c 55, §1; am L 1993, c 300, §3; am L 1997, c 178, §9; am L 2001, c 143, §2; am L 2007, c 103,

§§2, 5(1); am L 2009, c 198, §3; am L 2012, c 188, §1; am L 2015, c 185, §2; am L 2016, c 76, §2]

Case Notes

"Use" defined. 36 H. 170.

" **§243-2 Distributors to register and be licensed.** Every distributor, and any person before becoming a distributor, shall register as such with the department of taxation on forms to be prescribed, prepared, and furnished by the department and the department shall issue to such distributor a license which shall be valid until revoked by the department as hereinafter provided. However, distributors who cannot legally be required by the State to so register and be licensed, or to perform the duties required of distributors by any other provisions of this chapter, shall be deemed to be excluded from the operation of such provisions. [L 1932 1st, c 19, §3; RL 1935, §2012; am L Sp 1941, c 26, pt of §1; RL 1945, §5403; RL 1955, §123-2; am L Sp 1959 2d, c 1, §16; HRS §243-2]

" **§243-3 Retail dealers, permits; certificates.** (a) The certificate of a retail dealer as to the amount of the retail dealer's retail sales during the month, referred to in section 243-10, is of no validity unless at the time of making the certificate the retail dealer holds a permit from the department of taxation, which is then in effect. In order to obtain a permit, a retail dealer shall make an application to the department therefor, in such form as the department prescribes, and containing such information as the department requires.

(b) Any person who makes a false or fraudulent application or certificate or false statement in an application or certificate provided for by this chapter, with intent to defraud the State or to obtain, for a licensed distributor, an unauthorized credit, or who in any manner intentionally deceives or attempts to deceive the department in relation to an application or certificate provided for by this chapter, shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

(c) No permit shall be issued to a retail dealer unless the department is satisfied that:

- (1) The retail dealer, as to all of the liquid fuel purchased by the retail dealer from licensed distributors, is engaged exclusively in selling the same at retail, and is not using the liquid fuel for any other purpose; or

- (2) The retail dealer maintains on the premises a pump or pumps drawing on tanks into which fuel is delivered by licensed distributors and from which no liquid fuel is drawn by the retailer for any purpose other than the sale thereof at retail, and the retail dealer further maintains records showing the quantity of liquid fuel on hand in those tanks at the beginning and end of each month and the deliveries into those tanks made by licensed distributors during the month; or
- (3) The retail dealer maintains records by which retail sales of liquid fuel purchased from licensed distributors are segregated from all other sales or uses of liquid fuel, and further showing the quantity of liquid fuel on hand at the beginning and end of each month and the purchases of liquid fuel from licensed distributors during the month.

(d) Permits to retail dealers shall be issued on an annual basis and shall expire at the end of each calendar year. A fee of \$5 shall be charged for each permit or renewal thereof. Permits shall be numbered and each certificate made by a retail dealer holding a permit shall bear the same identifying number as the permit which the retail dealer holds.

(e) The department may revoke a permit upon the grounds hereinafter stated, after notice to the retail dealer holding the permit informing the retail dealer of the grounds of the proposed revocation and of the time and place at which a hearing will be held thereon. If the department finds, after the hearing, that there is good cause therefor it may revoke the permit. The permit may be revoked upon any of the following grounds:

- (1) A false or fraudulent application or false statement in an application;
- (2) The giving of a false or fraudulent certificate or a false statement in a certificate;
- (3) Failure to maintain the practices or records required by paragraphs (1), (2), or (3) of subsection (c), whichever is applicable as shown by the retail dealer's application for the permit;
- (4) Incomplete or inaccurate records when and if required to be kept.

(f) Each retail dealer who holds a permit issued by the department which remains in effect, may make a certificate showing the amount of retail sales, made by the retail dealer during the month, of liquid fuel purchased from a licensed distributor, and further may furnish such certificate to the licensed distributor from whom the retail dealer purchased the liquid fuel, for the retail dealer's use as provided, in section

243-10. [L 1957, c 322, §2; am L Sp 1959 2d, c 1, §16; Supp, §123-2.5; HRS §243-3; gen ch 1985]

Cross References

Hearings, see chapter 91.

" **§243-3.5 Environmental response, energy, and food security tax; uses.** (a) In addition to any other taxes provided by law, subject to the exemptions set forth in section 243-7, there is hereby imposed a state environmental response, energy, and food security tax on each barrel or fractional part of a barrel of petroleum product sold by a distributor to any retail dealer or end user of petroleum product, other than a refiner. The tax shall be \$1.05 on each barrel or fractional part of a barrel of petroleum product that is not aviation fuel; provided that of the tax collected pursuant to this subsection:

- (1) 5 cents of the tax on each barrel shall be deposited into the environmental response revolving fund established under section 128D-2;
- (2) 15 cents of the tax on each barrel shall be deposited into the energy security special fund established under section 201-12.8;
- (3) 10 cents of the tax on each barrel shall be deposited into the energy systems development special fund established under section 304A-2169.1; and
- (4) 15 cents of the tax on each barrel shall be deposited into the agricultural development and food security special fund established under section 141-10.

The tax imposed by this subsection shall be paid by the distributor of the petroleum product.

(b) In addition to subsection (a), the tax shall also be imposed on each one million British thermal units of fossil fuel sold by a distributor to any retail dealer or end user, other than a refiner, of fossil fuel. The tax shall be 19 cents on each one million British thermal units of fossil fuel; provided that of the tax collected pursuant to this subsection:

- (1) 4.8 per cent of the tax on each one million British thermal units shall be deposited into the environmental response revolving fund established under section 128D-2;
- (2) 14.3 per cent of the tax on each one million British thermal units shall be deposited into the energy security special fund established under section 201-12.8;
- (3) 9.5 per cent of the tax on each one million British thermal units shall be deposited into the energy

systems development special fund established under section 304A-2169.1; and

- (4) 14.3 per cent of the tax on each one million British thermal units shall be deposited into the agricultural development and food security special fund established under section 141-10.

The tax imposed by this subsection shall be paid by the distributor of the fossil fuel.

(c) The tax imposed under subsection (b) shall not apply to coal used to fulfill a signed power purchase agreement between an independent power producer and an electric utility that is in effect as of June 30, 2015. An independent power producer shall be permitted to pass the tax imposed under subsection (b) on to an electric utility. In which case, the electric utility may recover the cost of the tax through an appropriate surcharge to the end user that is approved by the public utilities commission.

(d) A gas utility shall be allowed to recover the cost of the tax imposed under subsection (b) as part of its fuel cost in its fuel adjustment charge without further approval by the public utilities commission.

(e) Each distributor subject to the tax imposed by subsection (a) or (b), on or before the last day of each calendar month, shall file with the director, on forms prescribed, prepared, and furnished by the director, 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.

(f) Notwithstanding section 248-8 to the contrary, the environmental response, energy, and food security tax collected under this section shall be paid over to the director of finance for deposit as provided in subsection (a) or (b), as the case may be.

(g) Every distributor shall keep in the State and preserve for five years a record in a form as the department of taxation shall prescribe showing the total number of barrels, and the fractional part of barrels, of petroleum product or the total number of one million British thermal units of fossil fuel, as the case may be, sold by the distributor during any calendar month. The record shall show any other data and figures relevant to the enforcement and administration of this chapter as the department may require.

(h) For the purposes of this section:

"Barrel" may be converted to million British thermal units, using the United States Department of Energy, Energy Information Administration annual energy review or annual energy outlook.

"Fossil fuel" means a hydrocarbon deposit, such as coal, natural gas, or liquefied natural gas, derived from the accumulated remains of ancient plants or animals and used for fuel; provided that the term specifically does not include petroleum product. [L 1993, c 300, §2; am L 1994, c 205, §2; am L 2010, c 73, §§4, 14; am L 2014, c 107, §3(2); am L 2015, c 35, §4 and c 185, §§3, 4]

Law Journals and Reviews

What Can the Abolition of Slavery Teach Us About Climate Change? Local Action in the Liquefied Natural Gas Controversy. 35 UH L. Rev. 687 (2013).

" **§243-4 License taxes.** (a) Every distributor shall, in addition to any other taxes provided by law, pay a license tax to the department of taxation for each gallon of liquid fuel refined, manufactured, produced, or compounded by the distributor and sold or used by the distributor in the State or imported by the distributor, or acquired by the distributor from persons who are not licensed distributors, and sold or used by the distributor in the State. Any person who sells or uses any liquid fuel, knowing that the distributor from whom it was originally purchased has not paid and is not paying the tax thereon, shall pay such tax as would have applied to such sale or use by the distributor. The rates of tax imposed are as follows:

- (1) For each gallon of diesel oil, 1 cent;
- (2) For each gallon of gasoline or other aviation fuel sold for use in or used for airplanes, 1 cent;
- (3) For each gallon of naphtha sold for use in a power-generating facility, 2 cents;
- (4) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), and other than an alternative fuel, sold or used in the city and county of Honolulu, or sold in any county for ultimate use in the city and county of Honolulu, 16 cents state tax, and in addition thereto an amount, to be known as the "city and county of Honolulu fuel tax", as shall be levied pursuant to section 243-5;
- (5) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), and other than an alternative fuel, sold or used in the county of Hawaii, or sold in any county for ultimate use in the county of Hawaii, 16 cents state tax, and in addition thereto an amount, to be known as the "county

of Hawaii fuel tax", as shall be levied pursuant to section 243-5;

- (6) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), and other than an alternative fuel, sold or used in the county of Maui, or sold in any county for ultimate use in the county of Maui, 16 cents state tax, and in addition thereto an amount, to be known as the "county of Maui fuel tax", as shall be levied pursuant to section 243-5; and
- (7) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), and other than an alternative fuel, sold or used in the county of Kauai, or sold in any county for ultimate use in the county of Kauai, 16 cents state tax, and in addition thereto an amount, to be known as the "county of Kauai fuel tax", as shall be levied pursuant to section 243-5.

If it is shown to the satisfaction of the department, based upon proper records and from any other evidence as the department may require, that liquid fuel, other than fuel mentioned in paragraphs (1), (2), and (3), is used for agricultural equipment that does not operate upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by this section in excess of 1 cent per gallon. The department shall adopt rules to administer such refunds.

(b) Every distributor of diesel oil, in addition to the tax required by subsection (a), shall pay a license tax to the department for each gallon of diesel oil sold or used by the distributor for operating a motor vehicle or motor vehicles upon public highways of the State. The rates of the additional tax imposed are as follows:

- (1) For each gallon of diesel oil sold or used in the city and county of Honolulu, or sold in any other county for ultimate use in the city and county of Honolulu, 15 cents state tax, and in addition thereto an amount, to be known as the "city and county of Honolulu fuel tax", as shall be levied pursuant to section 243-5;
- (2) For each gallon of diesel oil sold or used in the county of Hawaii, or sold in any other county for ultimate use in the county of Hawaii, 15 cents state tax, and in addition thereto an amount, to be known as the "county of Hawaii fuel tax", as shall be levied pursuant to section 243-5;
- (3) For each gallon of diesel oil sold or used in the county of Maui, or sold in any other county for

ultimate use in the county of Maui, 15 cents state tax, and in addition thereto an amount, to be known as the "county of Maui fuel tax", as shall be levied pursuant to section 243-5; and

- (4) For each gallon of diesel oil sold or used in the county of Kauai, or sold in any other county for ultimate use in the county of Kauai, 15 cents state tax, and in addition thereto an amount, to be known as the "county of Kauai fuel tax", as shall be levied pursuant to section 243-5.

If any user of diesel oil furnishes a certificate, in a form that the department shall prescribe, to the distributor or if the distributor who uses diesel oil signs the certificate, certifying that the diesel oil is for use in operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the tax as provided in paragraphs (1) to (4) shall not be applicable. If a certificate is not or cannot be furnished and the diesel oil is in fact for use for operating a motor vehicle or motor vehicles in areas other than upon public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by the foregoing paragraphs. The department shall adopt rules to administer the refunding of such taxes.

(c) The tax shall not be collected in respect to any benzol, benzene, toluol, xylol, or alternative fuel sold for use other than for operating internal combustion engines. With respect to these products, other than alternative fuels, the department, by rule, shall provide for the reporting and payment of the tax and for the keeping of records in such a manner as to collect, for each gallon of each product sold for use in internal combustion engines for the generation of power, or so used, the same tax or taxes as apply to each gallon of diesel oil. With respect to alternative fuels, the only tax collected shall be that provided in paragraphs (1), (2), and (3) of this subsection. This subsection shall not apply to aviation fuel sold for use in or used for airplanes.

- (1) Every distributor of any alternative fuel for operation of an internal combustion engine shall pay a license tax to the department of one-quarter of 1 cent for each gallon of alternative fuel sold or used by the distributor;
- (2) Every distributor, in addition to the tax required under paragraph (1) of this subsection, shall pay a license tax to the department for each gallon of alternative fuel sold or used by the distributor for operating a motor vehicle or motor vehicles upon the public highways of the State at a rate proportional to

that of the rates applicable to diesel oil in subsection (b), rounded to the nearest one-tenth of a cent, as follows:

- (A) Ethanol, 0.145 times the rate for diesel;
- (B) Methanol, 0.11 times the rate for diesel;
- (C) Biodiesel, 0.25 times the rate for diesel;
- (D) Liquefied petroleum gas, 0.33 times the rate for diesel; and
- (E) For other alternative fuels, the rate shall be based on the energy content of the fuels as compared to diesel fuel, using a lower heating value of one hundred thirty thousand British thermal units per gallon as a standard for diesel, so that the tax rate, on an energy content basis, is equal to one-quarter the rate for diesel fuel.

The taxes so paid shall be paid into the state treasury and deposited in special funds or paid over in the same manner as provided in subsection (b) in respect of the tax on diesel oil;

- (3) If any user of alternative fuel furnishes to the distributor a certificate, in a form that the department shall prescribe or if the distributor who uses alternative fuel signs the certificate, certifying that the alternative fuel is for use in operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the tax as provided by paragraphs (1) and (2) of this subsection shall not be applicable; provided that no certificate shall be required if the alternative fuel is used for fuel and heating purposes in the home. If a certificate is not or cannot be furnished and the alternative fuel is in fact used for operating an internal combustion engine or operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by the foregoing paragraphs. The department shall adopt rules to administer the refunding of these taxes.

(d) No tax shall be collected in respect to any liquid fuel, including diesel oil and liquefied petroleum gas, shown to the satisfaction of the department to have been sold for use in and actually delivered to, or sold in, the county of Kalawao. [L 1932 1st, c 19, §4; am L 1933, c 133, §2; am L 1937, c 189, §1; am L 1939, c 254, §1; am L Sp 1941, c 26, pt of §1; RL 1945, §5404; am L 1947, c 196, §2; am L 1949, c 360, §4; am L 1951, c 187, §2 and c 302, §1; am L 1953, cc 20, 197, 198, and 213, §1;

am L 1955, cc 147, 148, 181, §1, and c 250, §2; RL 1955, §123-3; am L 1957, c 217, §2; am L Sp 1959 2d, c 1, §16; am L 1962, c 23, §1; HRS §243-4; am L 1969, c 215, §1; am L 1970, c 69, §1 and c 180, §18; am L 1971, c 51, §§1, 2; am L 1977, c 195, §2; am L 1985, c 239, §4; gen ch 1985; am L 1986, c 54, §1; am L 1991, c 263, §11; am L 2001, c 143, §3; am L 2004, c 96, §2; am L 2005, c 22, §5; am L 2007, c 103, §§3, 5(1) and c 209, §3; am L 2009, c 198, §§2, 3; am L 2012, c 188, §1; am L 2016, c 76, §2]

Note

The 2016 amendment applies retroactively and shall be effective on and after January 1, 2016. L 2016, c 76, §5.

" **§243-5 County fuel tax.** The amount of the "county of Hawaii fuel tax", "city and county of Honolulu fuel tax", "county of Maui fuel tax", and "county of Kauai fuel tax", respectively, shall be determined by resolution of the county or the city council of each county adopted in the manner provided by law relating to resolutions involving the expenditure of public money. The amount fixed by the resolution may be, per gallon, one or more cents or a fraction of a cent or both, or it may be zero. The amount fixed for alternative fuels may be proportional to the energy contents of the fuels, as determined by their lower heating values, times one-half. No resolution shall be adopted until the county or the city council shall conduct a public hearing on the amount of tax proposed. Public notice of the hearing shall be given in the county at least twice within a period of thirty days immediately preceding the date of hearing. If the resolution is adopted, it shall take effect on the first day of the second month following the date of adoption of the resolution. The county or the city council shall notify the department of taxation of any county fuel tax changes within ten days after the resolution is adopted.

Until and unless otherwise provided by resolution adopted as above provided, the amount of the "county of Hawaii fuel tax" shall be zero, the amount of the "city and county of Honolulu fuel tax" shall be 2-1/2 cents per gallon, the amount of the "county of Maui fuel tax" shall be 2 cents per gallon, and the amount of the "county of Kauai fuel tax" shall be 2 cents per gallon. [L 1955, c 250, §3; RL 1955, §123-3.1; HRS §243-5; am L 1991, c 197, §1; am L 1998, c 2, §67; am L 2001, c 143, §4]

Revision Note

"County council" substituted for "board of supervisors" to conform to county charters.

" **§243-6 Fuel taxes, dispositions.** The "city and county of Honolulu fuel tax" shall be paid by the department of taxation into the state treasury, and shall, by the state director of finance, be paid over to the director of finance of the city and county of Honolulu for deposit into the fund known as the "highway fund" created by section 249-18.

The "county of Kauai fuel tax" shall be paid by the department into the state treasury, and shall, by the state director of finance, be paid over to the director of finance of the county of Kauai for deposit into the fund known as the "highway fund" created by section 249-18.

The "county of Hawaii fuel tax" shall be paid by the department into the state treasury, and shall, by the state director of finance, be paid over to the director of finance of the county of Hawaii for deposit into the fund known as the "highway fund" created by section 249-18.

The "county of Maui fuel tax" collected on account of liquid fuel sold or used on the island of Lanai or sold elsewhere for ultimate use on the island of Lanai, shall be paid by the department into the state treasury, and shall, by the state director of finance, be paid over to the director of finance of the county of Maui for deposit into the fund known as the "highway fund" created by section 249-18, for expenditure on the island of Lanai. The "county of Maui fuel tax" collected on account of liquid fuel sold or used on the island of Molokai or sold elsewhere for ultimate use on the island of Molokai, shall be paid by the department into the state treasury, and shall, by the state director of finance, be paid over to the director of finance of the county of Maui for deposit into the fund known as the "highway fund" created by section 249-18, for expenditure on the island of Molokai. The remainder of the "county of Maui fuel tax" shall be paid by the department into the state treasury, and shall, by the state director of finance, be paid over to the director of finance of the county of Maui for deposit into the fund known as the "highway fund" created by section 249-18.

Each of the foregoing taxes shall be expended for the following purposes, for the island for which the tax revenue is specially indicated, or, if none, for the county for which the tax revenue is indicated:

- (1) For payment of interest on and redemption of any bonds duly issued or sold on or after July 1, 1951, under chapter 47 for the financing or aiding in financing the construction of county highway tunnels, approach

- roads thereto, and highways. Such payments of interest and principal on the bonds when due, shall be first charges on such moneys so deposited in the fund.
- (2) For acquisition, designing, construction, reconstruction, improvement, repair, and maintenance of county main and general thoroughfares, highways, and other streets, street lights, storm drains, and bridges, including costs of new land therefor, when expenditures for the foregoing purposes cannot be financed under state-federal aid projects.
 - (3) In the case of the city and county of Honolulu, for payment of the city and county's share in an improvement district initiated by the city and county for an improvement listed in (2) above which is permitted to be constructed in the city and county.
 - (4) For the construction of county highway tunnels, overpasses, underpasses, and bridges, where such improvement cannot be made under state-federal aid projects.
 - (5) For purposes and functions connected with county traffic control and preservation of safety upon the public highways and streets.
 - (6) For purposes and functions in connection with mass transit.
 - (7) For acquisition, design, construction, improvement, repair, and maintenance of bikeways.
 - (8) No expenditure shall be made, out of the revenues paid into any such fund, which will jeopardize federal aid for highway construction. [L 1955, c 250, §6; RL 1955, §123-3.2; am L 1957, c 250, §1 and c 276, §1; am L 1959, c 74, §1; am L Sp 1959 2d, c 1, §§14, 16; am L 1963, c 114, §1; HRS §243-6; am L 1970, c 197, §1; am L 1977, c 68, §1]

Cross References

Special funds, see also §248-8.

" **§243-7 Tax not applicable, when.** (a) This chapter requiring the payment of license fees shall not be held or construed to apply to fuel imported into the State in interstate or foreign commerce while and so long as such fuel is beyond the taxing power of the State, nor to any such fuel exported or sold to the government of the United States or any department thereof for official use of the government, nor to any fuel exported or sold to another licensed distributor; but every distributor shall be required to report such imports, exports, and sales as

provided by this chapter and in such detail as the department of taxation shall require.

(b) This chapter shall not apply to the sale of liquid fuel sold or used in the State for ultimate use by an intra-county ferry service that serves a county with a population of less than five hundred thousand residents and that includes at least three islands inhabited by permanent residents. [L 1932 1st, c 19, §10; RL 1935, §2019; am L Sp 1941, c 26, pt of §1; RL 1945, §5405; am L 1951, c 136, §2; RL 1955, §123-4; am L Sp 1959 2d, c 1, §16; HRS §243-7; am L 2008, c 57, §3]

Note

The 2008 amendment applies to taxable years beginning after December 31, 2007. L 2008, c 57, §5.

Case Notes

Applied to airlines. 36 H. 170.

" **§243-8 License taxes payable monthly.** License taxes imposed by this chapter shall be paid in monthly installments to the department of taxation. [L 1932 1st, c 19, §5; RL 1935, §2014; am L Sp 1941, c 26, pt of §1; RL 1945, §5407; RL 1955, §123-5; am L Sp 1959 2d, c 1, §16; HRS §243-8]

" **§243-9 Distributors, etc., to keep records.** Every distributor shall keep in the State and preserve for five years a record in such form as the department of taxation shall prescribe, showing separately for each county and for the islands of Lanai and Molokai, within which or whereon fuel is sold or used during each month of the calendar year, the following:

- (1) The total number of gallons of fuel refined, manufactured, produced, or compounded by the distributor and sold or used by the distributor, 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 such fuel imported by the distributor, or acquired by the distributor from persons not licensed distributors, and sold or used by the distributor, and if for ultimate use in another county or on either island, the name of that county or island; and
- (3) The total number of gallons of such fuel sold 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 so sold or used from the imposition of the tax provided for by this chapter.

The record shall show such other data and figures relevant to the enforcement and administration of this chapter as the department may require. [L 1932 1st, c 19, §6; RL 1935, §2015; am L Sp 1941, c 26, pt of §1; RL 1945, §5408; am L 1947, c 196, §3; am L 1949, c 373, §2; am L 1953, c 20, §6; RL 1955, §123-6; am L Sp 1959 2d, c 1, §16; am L 1963, c 45, §6; HRS §243-9; gen ch 1985]

Case Notes

Cited: 36 H. 170, 175.

" **§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, on forms prescribed, prepared, and furnished by the director, 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. [L 1932 1st, c 19, §7; am L 1933, c 133, §3; RL 1935, §2016; am L 1937, c 189, §2; am L Sp 1941, c 26, pt of §1; am L 1943, c 4; RL 1945, §5409; am L 1947, c 196, §4; am L 1949, c 373, §3; am L 1953, c 20, §7 and c 125, pt of §9; am L 1955, c 250, §4; RL 1955, §123-7; am L 1957, c 322, §3; am L Sp 1959 2d, c 1, §16; am L 1965, c 169, §1; HRS §243-10; gen ch 1985; am L 1991, c 55, §2; am L 2000, c 85, §2; am L 2010, c 22, §4]

Case Notes

Cited: 36 H. 170, 175.

" **§243-11 Failure to make and file statements and making false statement unlawful.** It shall be unlawful for any distributor, or any other person, to fail, neglect, or refuse to make and file any statement required by this chapter in the manner or within the time therein provided or to make any such statement which is false in any particular. [L 1932 1st, c 19, §8; RL 1935, §2017; am L Sp 1941, c 26, pt of §1; RL 1945, §5410; RL 1955, §123-8; HRS §243-11]

" **§243-12 Procedure upon failure to file statement; penalties.** If any distributor or other person fails, neglects, or refuses to file any statement or report as herein provided, the director of taxation, immediately after the required time for such filing has expired, may proceed to inform oneself as best the director may regarding the matters and things required to be set forth in such statement and from such information as the director is able to obtain shall:

- (1) Make a statement showing such matters and things; and
- (2) Determine and fix the amount of license tax due from the distributor or other person for such month, and proceed to collect the amount of the license tax with penalties and interest added thereto pursuant to section 231-39.

Upon request of the director, the attorney general (or the attorney general's deputies, including the county attorneys and public prosecutor) shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect any tax herein imposed which is delinquent and all penalties and interest accrued, or any other appropriate action at law or otherwise to enforce this chapter. [L 1932 1st, c 19, §9; RL 1935, §2018; am L Sp 1941, c 26, pt of §1; RL 1945, §5411; am L 1953, c 125, pt of §9; RL 1955, §123-9; am L Sp 1959 2d, c 1, §16; HRS §243-12; gen ch 1985]

" **§243-13 Director empowered to make examinations, penalty, etc.** The director of taxation and the director's authorized assistants may subpoena witnesses, compel the production of books, papers, and other records, administer oaths, examine books and records, and hear and take such evidence in relation to any matters within the director's jurisdiction, and upon which it is necessary or proper that the director be informed, under this chapter, as in the director's discretion the director may deem proper. The circuit courts shall have power, upon request of the director or any such assistant, to enforce by proper contempt proceedings the attendance of witnesses and the giving of testimony by them, and the production of books, papers, and records. False swearing under oath as to any material fact at any hearing held under this section shall be subject to chapter 710, part V. If the examination discloses that any reports of distributors or other persons theretofore filed with the director by the distributors or other persons, pursuant to the requirements of this chapter, have shown incorrectly the number of gallons of fuel sold or used, or the tax accruing thereon, so that any additional license taxes are due and payable under this chapter, the director shall proceed

to collect such unpaid license taxes. [L 1932 1st, c 19, §11; RL 1935, §2020; am L Sp 1941, c 26, pt of §1; RL 1945, §5212; RL 1955, §123-10; am L Sp 1959 2d, c 1, §16; HRS §243-13; gen ch 1985; am L 1991, c 55, §3]

" **§243-14 Assessments; limitation period; exceptions; extension by agreement.** (a) In any case of computation of the tax by the director of taxation, as provided in sections 243-12 and 243-13, the amount of the tax shall be assessed against the person liable therefor, and notice shall be given to the person of the amount of tax so assessed with penalties and interest. The notice may be given by mail, addressed to the person assessed at the person's last known residence or place of business.

(b) The amount of license taxes imposed by this chapter shall be assessed or levied, or the overpayment, if any, shall be credited within three years after filing of the monthly statement, or within three years of the due date prescribed for the filing of the statement, whichever is later. No proceeding in court without assessment for the collection of the taxes or the enforcement of the liability shall begin after the expiration of the three-year period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed prior to July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

- (1) The taxpayer agrees to suspend the period;
- (2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
- (3) An offer in compromise under section 231-3(10) is pending; and
- (4) During which the taxpayer is outside the State if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the State the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months.

As to all tax payments for which a refund or credit is not authorized by this section (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or by section 40-35 are exclusive.

(c) In the case of a false or fraudulent statement with intent to evade tax or liability, or of a failure to file a statement, the tax or liability may be assessed or levied at any time; provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the State.

(d) Where, before the expiration of the time prescribed in this section for the assessment, levy, and collection of the tax or liability, both the department and the taxpayer have consented in writing to its assessment or levy after the expiration date, the tax or liability may be assessed or levied, or the overpayment, if any, may be credited at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by a subsequent agreement in writing made before the expiration of the period previously agreed upon. [L Sp 1941, c 26, §1(12); RL 1945, §5413; RL 1955, §123-11; am L Sp 1959 2d, c 1, §16; HRS §243-14; gen ch 1985; am L 1991, c 55, §4; am L 1993, c 257, §4; am L 1994, c 19, §3; am L 2009, c 166, §10]

Note

Applicability of L 2009, c 166. L 2009, c 166, §27.

" **§243-14.5 Appeals.** Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114. The hearing and disposition of the appeal, including the distribution of costs shall be as provided in chapter 232. [L 1992, c 147, §1; am L 2000, c 199, §6; am L 2004, c 123, §6]

Note

The 2004 amendment applies to tax appeals filed on or after July 1, 2004. L 2004, c 123, §14.

" **§243-15 REPEALED.** L 1995, c 92, §28.

" **§243-16 Rules and regulations.** Subject to chapter 91, the director of taxation shall have power to make rules and regulations relating to matters of procedure in the administration of this chapter and the manner and forms of records to be kept by distributors, and to prescribe standard forms of statements to be filed by distributors or other persons, affidavits, and any other statements or other written data required to be filed or furnished under this chapter. The rules and regulations shall have the force and effect of law. [L 1932 1st, c 19, §14; RL 1935, §2023; am L Sp 1941, c 26, pt of §1; RL 1945, §5415; RL 1955, §123-13; am L 1965, c 96, §85; HRS §243-16]