

JAN 20 2023

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Section 237-24, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§237-24 Amounts not taxable. This chapter shall not
4 apply to the following amounts:

- 5 (1) Amounts received under life insurance policies and
6 contracts paid by reason of the death of the insured;
- 7 (2) Amounts received (other than amounts paid by reason of
8 death of the insured) under life insurance, endowment,
9 or annuity contracts, either during the term or at
10 maturity or upon surrender of the contract;
- 11 (3) Amounts received under any accident insurance or
12 health insurance policy or contract or under workers'
13 compensation acts or employers' liability acts, as
14 compensation for personal injuries, death, or
15 sickness, including also the amount of any damages or
16 other compensation received, whether as a result of



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- 1 action or by private agreement between the parties on
2 account of the personal injuries, death, or sickness;
- 3 (4) The value of all property of every kind and sort
4 acquired by gift, bequest, or devise, and the value of
5 all property acquired by descent or inheritance;
- 6 (5) Amounts received by any person as compensatory damages
7 for any tort injury to the person, or to the person's
8 character reputation, or received as compensatory
9 damages for any tort injury to or destruction of
10 property, whether as the result of action or by
11 private agreement between the parties (provided that
12 amounts received as punitive damages for tort injury
13 or breach of contract injury shall be included in
14 gross income);
- 15 (6) Amounts received as salaries or wages for services
16 rendered by an employee to an employer;
- 17 (7) Amounts received as alimony and other similar payments
18 and settlements;
- 19 (8) Amounts collected by distributors as fuel taxes on
20 "liquid fuel" imposed by chapter 243, and the amounts



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- 1 collected by such distributors as a fuel tax imposed
2 by any Act of the Congress of the United States;
- 3 (9) Taxes on liquor imposed by chapter 244D on dealers
4 holding permits under that chapter;
- 5 (10) The amounts of taxes on cigarettes [~~and~~], tobacco
6 products, e-liquid cartridges, and open system
7 e-liquid imposed by chapter 245 on wholesalers or
8 dealers holding licenses under that chapter and
9 selling the products at wholesale;
- 10 (11) Federal excise taxes imposed on articles sold at
11 retail and collected from the purchasers thereof and
12 paid to the federal government by the retailer;
- 13 (12) The amounts of federal taxes under chapter 37 of the
14 Internal Revenue Code, or similar federal taxes,
15 imposed on sugar manufactured in the State, paid by
16 the manufacturer to the federal government;
- 17 (13) An amount up to, but not in excess of, \$2,000 a year
18 of gross income received by any blind, deaf, or
19 totally disabled person engaging, or continuing, in
20 any business, trade, activity, occupation, or calling
21 within the State; a corporation all of whose



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1 outstanding shares are owned by an individual or
2 individuals who are blind, deaf, or totally disabled;
3 a general, limited, or limited liability partnership,
4 all of whose partners are blind, deaf, or totally
5 disabled; or a limited liability company, all of whose
6 members are blind, deaf, or totally disabled;

7 (14) Amounts received by a producer of sugarcane from the
8 manufacturer to whom the producer sells the sugarcane,
9 where:

10 (A) The producer is an independent cane farmer, so
11 classed by the Secretary of Agriculture under the
12 Sugar Act of 1948 (61 Stat. 922, chapter 519) as
13 the Act may be amended or supplemented;

14 (B) The value or gross proceeds of sale of the sugar,
15 and other products manufactured from the
16 sugarcane, is included in the measure of the tax
17 levied on the manufacturer under section
18 237-13(1) or (2);

19 (C) The producer's gross proceeds of sales are
20 dependent upon the actual value of the products
21 manufactured therefrom or the average value of



1 all similar products manufactured by the
2 manufacturer; and
3 (D) The producer's gross proceeds of sales are
4 reduced by reason of the tax on the value or sale
5 of the manufactured products;
6 (15) Money paid by the State or eleemosynary child-placing
7 organizations to foster parents for their care of
8 children in foster homes;
9 (16) Amounts received by a cooperative housing corporation
10 from its shareholders in reimbursement of funds paid
11 by such corporation for lease rental, real property
12 taxes, and other expenses of operating and maintaining
13 the cooperative land and improvements; provided that
14 such a cooperative corporation is a corporation:
15 (A) Having one and only one class of stock
16 outstanding;
17 (B) Each of the stockholders of which is entitled
18 solely by reason of the stockholder's ownership
19 of stock in the corporation, to occupy for
20 dwelling purposes a house, or an apartment in a
21 building owned or leased by the corporation; and



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1 (C) No stockholder of which is entitled (either
2 conditionally or unconditionally) to receive any
3 distribution not out of earnings and profits of
4 the corporation except in a complete or partial
5 liquidation of the corporation; and

6 (17) Amounts received by a contractor of the Patient-
7 Centered Community Care program that is established by
8 the United States Department of Veterans Affairs
9 pursuant to title 38 United States Code section 8153,
10 as amended, for the actual costs or advancements to
11 third party health care providers pursuant to a
12 contract with the United States."

13 SECTION 2. Section 237-25, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) Any provision of law to the contrary notwithstanding,
16 there shall be exempted from, and excluded from the measures of,
17 the tax imposed by chapter 237 all sales, and the gross proceeds
18 of all sales, of:

19 (1) Intoxicating liquor, as defined in chapter 281,
20 hereafter sold by any person licensed under chapter
21 281 to the United States (including any agency or



1 instrumentality of the United States that is wholly
2 owned or otherwise so constituted as to be immune from
3 the levy of a tax under chapter 238 or 244D but not
4 including national banks), or to any organization to
5 which that sale is permitted by the proviso of "Class
6 3" of section 281-31, located on any Army, Navy, or
7 Air Force reservation, but the person making the sale
8 shall nevertheless, within the meaning of chapters
9 237, 244D, and 281 be deemed to be a licensed seller;

10 (2) Tobacco products [~~and~~], cigarettes, e-liquid
11 cartridges, and open system e-liquid, as defined in
12 chapter 245, sold by any person licensed under the
13 chapter to the United States (including any agency or
14 instrumentality thereof that is wholly owned or
15 otherwise so constituted as to be immune from the levy
16 of a tax under chapter 238 or 245 but not including
17 national banks), but the person making the sale shall
18 nevertheless, within the meaning of chapters 237 and
19 245, be deemed to be a licensed seller;

20 (3) Other tangible personal property sold by any person
21 licensed under this chapter to the United States



1 (including any agency, instrumentality, or federal
 2 credit union thereof but not including national
 3 banks), and to any state-chartered credit union, but
 4 the person making such sale shall nevertheless, within
 5 the meaning of this chapter, be deemed a licensed
 6 seller; and

7 (4) When the amount of property sold by a licensee turns
 8 upon the amount of the property sold through a vending
 9 machine or similar device to the customer using the
 10 device, there shall not be deemed to have occurred any
 11 sale covered by an exemption under paragraph (1), (2),
 12 or (3)."

13 SECTION 3. Section 238-3, Hawaii Revised Statutes, is
 14 amended by amending subsection (g) to read as follows:

15 "(g) The tax imposed by this chapter shall not apply to
 16 any intoxicating liquor as defined in chapter 244D and
 17 cigarettes [~~and~~], tobacco products, e-liquid cartridges, and
 18 open system e-liquid as defined in chapter 245, imported into
 19 the State and sold to any person or common carrier in interstate
 20 commerce, whether ocean-going or air, for consumption out-of-



1 state by the person, crew, or passengers on the shipper's
2 vessels or airplanes."

3 SECTION 4. Chapter 245, Hawaii Revised Statutes, is
4 amended by amending its title to read as follows:

5 "CHAPTER 245

6 CIGARETTE TAX [~~AND~~], TOBACCO TAX, AND

7 E-LIQUID TAX LAW"

8 SECTION 5. Section 245-1, Hawaii Revised Statutes, is
9 amended as follows:

10 1. By adding five new definitions to be appropriately
11 inserted and to read:

12 "E-liquid" means any solution containing nicotine that is
13 designed or sold for use with an electronic smoking device.

14 "E-liquid cartridge" means any prefilled and sealed
15 disposable container of e-liquid that can be used with an
16 electronic smoking device.

17 "Electronic smoking device" means any electronic product
18 that can be used to aerosolize and deliver nicotine or other
19 substances to the person inhaling from the device, including an
20 electronic cigarette, electronic cigar, electronic cigarillo, or



1 electronic pipe, and any cartridge or other component of the
2 device or related product.

3 "Open system e-liquid" means e-liquid that is not sold in a
4 cartridge.

5 "Unit of open system e-liquid" means any measurable amount
6 of open system e-liquid."

7 2. By amending the definition of "business location" or
8 "place of business" to read:

9 ""Business location" or "place of business" means the
10 entire premises occupied by a retail tobacco and e-liquid permit
11 applicant or an entity required to hold a retail tobacco and
12 e-liquid permit under this chapter and shall include but is not
13 limited to any store, stand, outlet, vehicle, cart, location,
14 vending machine, or structure from which cigarettes [~~or~~],
15 tobacco products, electronic smoking devices, e-liquid
16 cartridges, or units of open system of e-liquid are sold or
17 distributed to a consumer."

18 3. By amending the definitions of "consumer" and "dealer"
19 to read:

20 ""Consumer" means a person who acquires or possesses a
21 cigarette [~~or~~], a tobacco product, an electronic smoking device,



1 or e-liquid for personal consumption and not for resale or
2 distribution.

3 "Dealer" means any person coming into the possession of
4 cigarettes [~~or~~], tobacco products [~~which~~], electronic smoking
5 devices, e-liquid cartridges, or units of open system e-liquid
6 that have not been acquired from an authorized permit holder or
7 licensee under this chapter, or any person rendering a
8 distribution service who buys and maintains, at the person's
9 place of business, a stock of cigarettes [~~or~~], tobacco products,
10 electronic smoking devices, e-liquid cartridges, or units of
11 open system e-liquid that have not been acquired from a licensee
12 and who distributes or uses [~~such~~] cigarettes [~~or~~], tobacco
13 products[~~or~~], electronic smoking devices, e-liquid cartridges, or
14 units of open system e-liquid."

15 4. By amending the definition of "license" to read:
16 "License" means a license granted under this chapter[~~7~~]
17 that authorizes the holder to engage in the business of a
18 wholesaler or dealer of cigarettes [~~or~~], tobacco products,
19 electronic smoking devices, or e-liquid in the State. For
20 purposes of any action brought pursuant to section 231-35, the



1 term "license" shall include a retail tobacco and e-liquid
2 permit required under this chapter."

3 5. By amending the definition of "permittee" to read:

4 "Permittee" means the holder of a retail tobacco and
5 e-liquid permit in accordance with this chapter."

6 6. By amending the definition of "retailer" to read:

7 "Retailer" means an entity that engages in the practice of
8 selling cigarettes [e], tobacco products, electronic smoking
9 devices, or e-liquid to consumers and includes the owner of a
10 cigarette [e], tobacco product, electronic smoking device, or
11 e-liquid vending machine."

12 7. By amending the definitions of "retail sale", "tobacco
13 retailing", and "retail tobacco permit", and amending the term
14 "tobacco retailing" to read:

15 "Retail sale" or "~~tobacco~~ retailing" means the practice
16 of selling cigarettes [e], tobacco products, electronic smoking
17 devices, or e-liquid to consumers and includes the sale of
18 cigarettes [e], tobacco, electronic smoking devices, or
19 e-liquid through a vending machine.

20 "Retail tobacco and e-liquid permit" means a permit granted
21 under this chapter that authorizes an entity to engage in the



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1 business of selling cigarettes [~~and~~], tobacco products, and
2 e-liquid to consumers."

3 8. By amending the definition of "sale" or "sold" to read:

4 "Sale" or "sold" includes any delivery of cigarettes [~~or~~],
5 tobacco products, electronic smoking devices, or e-liquid,
6 whether cash is actually paid therefor or not."

7 9. By amending the definitions of "wholesale price" and
8 "wholesaler" to read:

9 "Wholesale price", in addition to any other meaning of the
10 term, means in the case of a tax upon the use of tobacco
11 products, e-liquid cartridges, or open system e-liquid, or upon
12 a sale not made at wholesale:

13 (1) If made by a person who during the month preceding the
14 accrual of the tax made substantial sales to retailers
15 of like tobacco products, e-liquid cartridges, or open
16 system e-liquid, the average price of the sales[~~7~~];
17 and

18 (2) If made by any other person, the average price of
19 sales to retailers of like tobacco products, e-liquid
20 cartridges, or open system e-liquid made by other



1 taxpayers in the same county during the month
2 preceding the accrual of the tax.

3 "Wholesaler" means a person rendering a distribution
4 service who buys and maintains, at the person's place of
5 business, a stock of cigarettes ~~[or]~~, tobacco products,
6 electronic smoking devices, or e-liquid that the person uses,
7 possesses, or distributes only to retailers, or other
8 wholesalers, or both."

9 SECTION 6. Section 245-2.5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~[f]~~§245-2.5~~[f]~~ Retail tobacco and e-liquid permit. (a)
12 ~~[Beginning December 1, 2006, every]~~ Every retailer engaged in
13 the retail sale of cigarettes ~~[and other]~~, tobacco products,
14 e-liquid cartridges, or open system e-liquid upon which a tax is
15 required to be paid under this chapter shall obtain a retail
16 tobacco and e-liquid permit.

17 (b) ~~[Beginning March 1, 2007, it]~~ It shall be unlawful for
18 any retailer engaged in the retail sale of cigarettes ~~[and~~
19 ~~other]~~, tobacco products, e-liquid cartridges, or open system
20 e-liquid upon which a tax is required to be paid under this
21 chapter to sell, possess, keep, acquire, distribute, or



1 transport cigarettes [~~or other~~], tobacco products, e-liquid
2 cartridges, or open system e-liquid for retail sale unless a
3 retail tobacco and e-liquid permit has been issued to the
4 retailer under this section and the retail tobacco and e-liquid
5 permit is in full force and effect.

6 (c) The retail tobacco and e-liquid permit shall be issued
7 by the department upon application by the retailer in the form
8 and manner prescribed by the department, and the payment of a
9 fee of \$20. Permits shall be valid for one year, from
10 December 1 to November 30, and renewable annually. Whenever a
11 retail tobacco and e-liquid permit is defaced, destroyed, or
12 lost, or the permittee relocates the permittee's business, the
13 department may issue a duplicate retail tobacco and e-liquid
14 permit to the permittee for a fee of \$5 per copy.

15 (d) A separate retail tobacco and e-liquid permit shall be
16 obtained for each place of business owned, controlled, or
17 operated by a retailer. A retailer that owns or controls more
18 than one place of business may submit a single application for
19 more than one retail tobacco and e-liquid permit. Each retail
20 tobacco and e-liquid permit issued shall clearly describe the



1 place of business where the operation of the business is
2 conducted.

3 (e) Any entity that operates as a dealer or wholesaler and
4 also sells cigarettes [~~or other~~], tobacco products, e-liquid
5 cartridges, or open system e-liquid to consumers at retail shall
6 acquire a separate retail tobacco and e-liquid permit.

7 (f) A retail tobacco and e-liquid permit shall be
8 nonassignable and nontransferable from one entity to another
9 entity. A retail tobacco and e-liquid permit may be transferred
10 from one business location to another business location after an
11 application has been filed with the department requesting that
12 transfer and approval has been obtained from the department.

13 (g) A retail tobacco and e-liquid permit issued under this
14 section shall be displayed at all times in a conspicuous place
15 at the place of business requiring the retail tobacco and
16 e-liquid permit.

17 (h) Any sales of cigarettes [~~or~~], tobacco products,
18 e-liquid cartridges, or open system e-liquid made through a
19 cigarette [~~or~~], tobacco product, electronic smoking device,
20 e-liquid cartridge, or open system e-liquid vending machine are
21 subject to the terms, conditions, and penalties of this chapter.



1 A retail tobacco and e-liquid permit need not be displayed on
2 cigarette [☒], tobacco product, electronic smoking device,
3 e-liquid cartridge, or open system e-liquid vending machines if
4 the retail tobacco and e-liquid permit holder is the owner of
5 the cigarette [☒], tobacco product, electronic smoking device,
6 e-liquid cartridge, or open system e-liquid vending machines and
7 the [~~cigarette or tobacco product~~] vending machines are operated
8 at the location described in the retail tobacco and e-liquid
9 permit.

10 (i) No retailer shall purchase any pack of cigarettes
11 without the appropriate tax stamp being affixed to the bottom of
12 the pack as required by this chapter.

13 (j) A vehicle from which cigarettes [☒], tobacco
14 products, e-liquid cartridges, or units of open system e-liquid
15 are sold is considered a place of business and requires a retail
16 tobacco and e-liquid permit. Retail tobacco and e-liquid
17 permits for a vehicle shall be issued bearing a specific motor
18 vehicle identification number and are valid only when physically
19 carried in the vehicle having the corresponding motor vehicle
20 identification number. Retail tobacco and e-liquid permits for
21 vehicles shall not be moved from one vehicle to another.



1 (k) A permittee shall be subject to the inspection and
2 investigation requirements of this chapter and shall provide the
3 department or the attorney general with any information deemed
4 necessary to verify compliance with the requirements of this
5 chapter.

6 (l) A permittee shall keep a complete and accurate record
7 of the permittee's cigarette [~~or~~], tobacco product, e-liquid
8 cartridge, or open system e-liquid inventory. The records
9 shall:

10 (1) Include:

11 (A) A written statement containing the name and
12 address of the permittee's source of its
13 cigarettes [~~and~~], tobacco products [~~+~~], e-liquid
14 cartridges, and open system e-liquid;

15 (B) The date of delivery, quantity, trade name or
16 brand, and price of the cigarettes [~~and~~], tobacco
17 products [~~+~~], e-liquid cartridges, and open system
18 e-liquid; and

19 (C) Documentation in the form of any purchase orders,
20 invoices, bills of lading, other written
21 statements, books, papers, or records in whatever



1 format, including electronic format, which
2 substantiate the purchase or acquisition of the
3 cigarettes [~~and~~], tobacco products, e-liquid
4 cartridges, and open system e-liquid stored or
5 offered for sale; and

6 (2) Be offered for inspection and examination within
7 twenty-four hours of demand by the department or the
8 attorney general, and shall be preserved for a period
9 of three years; provided that:

10 (A) Specified records may be destroyed if the
11 department and the attorney general both consent
12 to their destruction within the three-year
13 period; and

14 (B) Either the department or the attorney general may
15 adopt rules pursuant to chapter 91 that require
16 specified records to be kept longer than a period
17 of three years.

18 (m) The department may suspend or, after hearing, revoke
19 or decline to renew any retail tobacco and e-liquid permit
20 issued under this chapter whenever the department finds that the
21 applicant or permittee has failed to comply with this chapter or



1 any rule adopted under this chapter, or for any other good
2 cause. Good cause includes [~~but is not limited to~~] to instances
3 where an applicant or permittee has:

- 4 (1) Submitted a false or fraudulent application or
5 provided a false statement in an application; or
- 6 (2) Possessed or displayed a false or fraudulent retail
7 tobacco and e-liquid permit.

8 Upon suspending or revoking any retail tobacco and e-liquid
9 permit, the department shall request that the permittee
10 immediately surrender any retail tobacco and e-liquid permit or
11 duplicate issued to the permittee, and the permittee shall
12 surrender the permit or duplicate promptly to the department as
13 requested.

14 (n) Whenever the department suspends, revokes, or declines
15 to renew a retail tobacco and e-liquid permit, the department
16 shall notify the applicant or permittee immediately and afford
17 the applicant or permittee a hearing, if requested and if a
18 hearing has not already been afforded. After the hearing, the
19 department shall:

- 20 (1) Rescind its order of suspension;
- 21 (2) Continue the suspension;



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- 1 (3) Revoke the retail tobacco and e-liquid permit;
- 2 (4) Rescind its order of revocation;
- 3 (5) Decline to renew the retail tobacco and e-liquid
- 4 permit; or
- 5 (6) Renew the retail tobacco and e-liquid permit.
- 6 (o) Any cigarette, package of cigarettes, carton of
- 7 cigarettes, container of cigarettes, tobacco product, package of
- 8 tobacco products, [~~or any~~] container of tobacco products,
9 e-liquid cartridges, package of e-liquid cartridges, or unit of
- 10 open system e-liquid unlawfully sold, possessed, kept, stored,
- 11 acquired, distributed, or transported in violation of this
- 12 section may be seized and ordered forfeited pursuant to chapter
- 13 712A."

14 SECTION 7. Section 245-2.6, Hawaii Revised Statutes, is

15 amended to read as follows:

16 "~~{}~~§245-2.6~~{}~~ **Unlawful tobacco or e-liquid retailing in**

17 **the first degree.** (a) [~~Beginning March 1, 2007, a~~] A person or

18 entity required to obtain a retail tobacco and e-liquid permit

19 commits the offense of unlawful tobacco or e-liquid retailing in

20 the first degree if the person or entity knowingly fails to

21 obtain a valid permit required under section 245-2.5 and, for



1 the purposes of retail sale, recklessly sells, possesses,
2 stores, acquires, distributes, or transports five thousand or
3 more cigarettes.

4 (b) Unlawful tobacco or e-liquid retailing in the first
5 degree is a misdemeanor, except that any offense under
6 ~~[subsection (a)]~~ this section that occurs within five years of a
7 prior conviction for ~~[unlawful tobacco retailing in the first~~
8 ~~degree]~~ an offense under this section is a class C felony."

9 SECTION 8. Section 245-2.7, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[~~§~~245-2.7[~~]~~] Unlawful tobacco or e-liquid retailing in

12 the second degree. (a) ~~[Beginning March 1, 2007, a]~~ A person

13 or entity required to obtain a retail tobacco and e-liquid

14 permit commits the offense of unlawful tobacco or e-liquid

15 retailing in the second degree if the person or entity

16 recklessly fails to obtain a valid permit required under section

17 245-2.5 and, for the purposes of retail sale, recklessly sells,

18 possesses, stores, acquires, distributes, or transports ~~[fewer]~~ :

19 (1) Fewer than five thousand cigarettes; or ~~[any]~~

20 (2) Any quantity of tobacco products~~[-]~~, e-liquid

21 cartridges, or open system e-liquid.



1 (b) Unlawful tobacco or e-liquid retailing in the second
2 degree is [f]a[+] petty misdemeanor, except that any offense
3 under [~~subsection (a)~~] this section that occurs within five
4 years of a prior conviction for [~~unlawful tobacco retailing in~~
5 ~~the first or second degree~~] an offense under this section or
6 section 245-2.6 is a misdemeanor."

7 SECTION 9. Section 245-3, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§245-3 Taxes.** (a) Every wholesaler or dealer, in
10 addition to any other taxes provided by law, shall pay for the
11 privilege of conducting business and other activities in the
12 State:

- 13 (1) An excise tax equal to 5.00 cents for each cigarette
14 sold, used, or possessed by a wholesaler or dealer
15 after June 30, 1998, whether or not sold at wholesale,
16 or if not sold then at the same rate upon the use by
17 the wholesaler or dealer;
- 18 (2) An excise tax equal to 6.00 cents for each cigarette
19 sold, used, or possessed by a wholesaler or dealer
20 after September 30, 2002, whether or not sold at



- 1 wholesale, or if not sold then at the same rate upon
2 the use by the wholesaler or dealer;
- 3 (3) An excise tax equal to 6.50 cents for each cigarette
4 sold, used, or possessed by a wholesaler or dealer
5 after June 30, 2003, whether or not sold at wholesale,
6 or if not sold then at the same rate upon the use by
7 the wholesaler or dealer;
- 8 (4) An excise tax equal to 7.00 cents for each cigarette
9 sold, used, or possessed by a wholesaler or dealer
10 after June 30, 2004, whether or not sold at wholesale,
11 or if not sold then at the same rate upon the use by
12 the wholesaler or dealer;
- 13 (5) An excise tax equal to 8.00 cents for each cigarette
14 sold, used, or possessed by a wholesaler or dealer on
15 and after September 30, 2006, whether or not sold at
16 wholesale, or if not sold then at the same rate upon
17 the use by the wholesaler or dealer;
- 18 (6) An excise tax equal to 9.00 cents for each cigarette
19 sold, used, or possessed by a wholesaler or dealer on
20 and after September 30, 2007, whether or not sold at



1 wholesale, or if not sold then at the same rate upon
2 the use by the wholesaler or dealer;

3 (7) An excise tax equal to 10.00 cents for each cigarette
4 sold, used, or possessed by a wholesaler or dealer on
5 and after September 30, 2008, whether or not sold at
6 wholesale, or if not sold then at the same rate upon
7 the use by the wholesaler or dealer;

8 (8) An excise tax equal to 13.00 cents for each cigarette
9 sold, used, or possessed by a wholesaler or dealer on
10 and after July 1, 2009, whether or not sold at
11 wholesale, or if not sold then at the same rate upon
12 the use by the wholesaler or dealer;

13 (9) An excise tax equal to 11.00 cents for each little
14 cigar sold, used, or possessed by a wholesaler or
15 dealer on and after October 1, 2009, whether or not
16 sold at wholesale, or if not sold then at the same
17 rate upon the use by the wholesaler or dealer;

18 (10) An excise tax equal to 15.00 cents for each cigarette
19 or little cigar sold, used, or possessed by a
20 wholesaler or dealer on and after July 1, 2010,
21 whether or not sold at wholesale, or if not sold then



1 at the same rate upon the use by the wholesaler or
2 dealer;

3 (11) An excise tax equal to 16.00 cents for each cigarette
4 or little cigar sold, used, or possessed by a
5 wholesaler or dealer on and after July 1, 2011,
6 whether or not sold at wholesale, or if not sold then
7 at the same rate upon the use by the wholesaler or
8 dealer;

9 (12) An excise tax equal to seventy per cent of the
10 wholesale price of each article or item of tobacco
11 products, other than large cigars, sold by the
12 wholesaler or dealer on and after September 30, 2009,
13 whether or not sold at wholesale, or if not sold then
14 at the same rate upon the use by the wholesaler or
15 dealer; [~~and~~]

16 (13) An excise tax equal to fifty per cent of the wholesale
17 price of each large cigar of any length, sold, used,
18 or possessed by a wholesaler or dealer on and after
19 September 30, 2009, whether or not sold at wholesale,
20 or if not sold then at the same rate upon the use by
21 the wholesaler or dealer[-];



- 1 (14) An excise tax equal to 25 cents for each e-liquid
2 cartridge sold, used, or possessed by a wholesaler or
3 dealer on and after July 1, 2023, whether or not sold
4 at wholesale, or if not sold then at the same rate
5 upon the use by the wholesaler or dealer; and
- 6 (15) An excise tax equal to fifteen per cent of the
7 wholesale price of open system e-liquid sold, used, or
8 possessed by a wholesaler or dealer on and after
9 July 1, 2023, whether or not sold at wholesale, or if
10 not sold then at the same rate upon the use by the
11 wholesaler or dealer.

12 Where the tax imposed has been paid on cigarettes, little
13 cigars, [~~or~~] tobacco products, e-liquid cartridges, or units of
14 open system e-liquid that thereafter become the subject of a
15 casualty loss deduction allowable under chapter 235, the tax
16 paid shall be refunded or credited to the account of the
17 wholesaler or dealer. The tax shall be applied to cigarettes
18 through the use of stamps.

19 (b) The taxes, however, are subject to the following
20 limitations:



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- 1 (1) The measure of the taxes shall not include any
2 cigarettes [~~or~~], tobacco products, e-liquid
3 cartridges, or units of open system e-liquid exempted,
4 and so long as the same are exempted, from the
5 imposition of taxes by the Constitution or laws of the
6 United States;
- 7 (2) The measure of taxes shall exempt and exclude all
8 sales of cigarettes [~~and~~], tobacco products, e-liquid
9 cartridges, and units of open system e-liquid to the
10 United States (including any agency or instrumentality
11 thereof that is wholly owned or otherwise so
12 constituted as to be immune from the levy of a tax
13 under this chapter), sold by any person licensed under
14 this chapter; and
- 15 (3) The taxes shall be paid only once with respect to the
16 same cigarettes [~~or~~], tobacco product[~~s~~], e-liquid
17 cartridge, or unit of open system e-liquid. This
18 limitation shall not prohibit the imposition of the
19 excise tax on receipts from sales of tobacco products
20 under subsection (a) (5); provided that the amount



1 subject to the tax on each sale shall not include
2 amounts previously taxed under this chapter."

3 SECTION 10. Section 245-5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§245-5 Returns.** Every wholesaler or dealer, on or before
6 the twentieth day of each month, shall file with the department
7 a return showing the cigarettes [~~and~~], tobacco products,
8 e-liquid cartridges, and open system e-liquid sold, possessed,
9 or used by the wholesaler or dealer during the preceding
10 calendar month and of the taxes chargeable against the taxpayer
11 in accordance with this chapter. The form of the return shall
12 be prescribed by the department and shall include:

- 13 (1) A separate statement of the number and wholesale price
14 of cigarettes;
- 15 (2) The amount of stamps purchased and used;
- 16 (3) The wholesale price of tobacco products, sold,
17 possessed, or used; [~~and~~]
- 18 (4) The number of e-liquid cartridges sold, possessed, or
19 used;
- 20 (5) The wholesale price of open system e-liquid sold,
21 possessed, or used; and



1 [~~4~~] (6) Any other information that the department may
2 deem necessary, for the proper administration of this
3 chapter."

4 SECTION 11. Section 245-8, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) Each wholesaler or dealer shall keep a record of:

- 7 (1) Every sale or use of cigarettes [~~and~~], tobacco
8 products, e-liquid cartridges, and units of open
9 system e-liquid by the wholesaler or dealer;
- 10 (2) The number and wholesale price of cigarettes;
- 11 (3) The wholesale price of tobacco products [~~7~~] sold,
12 possessed, or used;
- 13 (4) The taxes payable on tobacco products sold, possessed,
14 or used, if any; [~~and~~]
- 15 (5) The number of e-liquid cartridges sold, possessed, or
16 used, if any;
- 17 (6) The taxes payable on e-liquid cartridges sold,
18 possessed, or used, if any;
- 19 (7) The wholesale price of open system e-liquid sold,
20 possessed, or used, if any;



1 (8) The taxes payable on open system e-liquid sold,
2 possessed, or used, if any; and
3 [~~5~~] (9) The amounts of stamps purchased and used,
4 in a form as the department may prescribe. The records shall be
5 offered for inspection and examination at any time upon demand
6 by the department or the attorney general, and shall be
7 preserved for a period of five years, except that the department
8 and the attorney general, in writing, shall both consent to
9 their destruction within the five-year period or either the
10 department or the attorney general may require that they be kept
11 longer. The department, by rule, may require the wholesaler or
12 dealer to keep other records as it may deem necessary for the
13 proper enforcement of this chapter."

14 SECTION 12. Section 245-9, Hawaii Revised Statutes, is
15 amended by amending subsections (a) and (b) to read as follows:

16 "(a) The department and the attorney general may examine
17 all records, including tax returns and reports under section
18 245-31, required to be kept or filed under this chapter, and
19 books, papers, and records of any person engaged in the business
20 of wholesaling or dealing cigarettes [~~and~~], tobacco products,
21 e-liquid cartridges, and open system e-liquid, to verify the



1 accuracy of the payment of the taxes imposed by this chapter.
2 Every person in possession of any books, papers, and records,
3 and the person's agents and employees, are directed and required
4 to give the department and the attorney general the means,
5 facilities, and opportunities for the examinations.

6 (b) The department and the attorney general may inspect
7 the operations, premises, and storage areas of any entity
8 engaged in the sale of cigarettes, or the contents of a specific
9 vending machine, during regular business hours. This inspection
10 shall include inspection of all statements, books, papers, and
11 records in whatever format, including electronic format,
12 pertaining to the acquisition, possession, transportation, sale,
13 or use of packages of cigarettes [~~and~~], tobacco products other
14 than cigarettes, e-liquid cartridges, and open system e-liquid,
15 to verify the accuracy of the payment of taxes imposed by this
16 chapter, and of the contents of cartons and shipping or storage
17 containers to ascertain that all individual packages of
18 cigarettes have an affixed stamp of proper denomination as
19 required by this chapter. This inspection may also verify that
20 all stamps were produced under the authority of the department.
21 Every entity in possession of any books, papers, and records,



1 and the entity's agents and employees, are directed and required
2 to give the department and the attorney general the means,
3 facilities, and opportunities for the examinations. For
4 purposes of this chapter "entity" means one or more individuals,
5 a company, corporation, a partnership, an association, or any
6 other type of legal entity."

7 SECTION 13. Section 245-17, Hawaii Revised Statutes, is
8 amended by amending subsection (f) to read as follows:

9 "(f) For the purposes of this section[+
10 ~~"Delivery]~~, "delivery sale" means any sale of an electronic
11 smoking device to a purchaser in the State where either:

12 (1) The purchaser submits the order for sale by means of a
13 telephonic or other method of voice transmission, the
14 mail or any other delivery service, or the internet or
15 other online service; or

16 (2) The electronic smoking device is delivered by use of
17 the mail or any other delivery service.

18 The foregoing sales of electronic smoking devices shall
19 constitute a delivery sale regardless of whether the seller is
20 located within or without the State.



1 ~~["Electronic smoking device" means any electronic product~~
2 ~~that can be used to aerosolize and deliver nicotine or other~~
3 ~~substances to the person inhaling from the device, including but~~
4 ~~not limited to an electronic cigarette, electronic cigar,~~
5 ~~electronic cigarillo, or electronic pipe, and any cartridge or~~
6 ~~other component of the device or related product.] "~~

7 SECTION 14. Section 245-31, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By amending its title to read:

10 "**§245-31 Monthly report on distributions of cigarettes**
11 **[and], tobacco products, e-liquid cartridges, and open system e-**
12 **liquid, and purchases of stamps.**"

13 2. By amending subsection (b) to read:

14 "(b) On or before the twentieth day of each month, every
15 licensee shall file on forms prescribed by the department:

16 (1) A report of the licensee's distributions of tobacco
17 products and the wholesale costs of tobacco products
18 during the preceding month; ~~[and]~~

19 (2) A report of the licensee's distributions of e-liquid
20 cartridges and units of open system e-liquid, and the



1 wholesale costs of e-liquid cartridges and units of
 2 open system e-liquid during the preceding month; and
 3 ~~[(2)]~~ (3) Any other information that the department may
 4 require to carry out this part."

5 SECTION 15. Section 245-32, Hawaii Revised Statutes, is
 6 amended to read as follows:

7 "~~[-]~~§245-32 ~~[-]~~ Tax refund or credit for cigarettes ~~[and]~~,
 8 tobacco products, e-liquid cartridges, and open system e-liquid
 9 shipped for sale or use outside the State. (a) The department
 10 shall adopt rules to provide a ~~[tobacco]~~ tax refund or credit to
 11 a licensee ~~[who]~~ on the tax the licensee has paid ~~[a tobacco~~
 12 ~~tax]~~ pursuant to section 245-3 on the distribution of cigarettes
 13 ~~[or]~~, tobacco products, e-liquid cartridges, or units of open
 14 system e-liquid that are shipped to a point outside the State
 15 for subsequent sale or use outside the State.

16 (b) This part shall not apply to cigarettes ~~[or]~~, tobacco
 17 products, e-liquid cartridges, or units of open system e-liquid
 18 that are distributed in this State to consumers and that are
 19 subsequently taken outside the State."



S.B. NO. 441

1 SECTION 16. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

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

6 SECTION 18. This Act shall take effect on July 1, 2023.

7

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be 'J. B. 2', is written over a horizontal line.

S.B. NO. 441

Report Title:

Electronic Smoking Devices; E-Liquid; Taxation; Regulation

Description:

Establishes an excise tax of 25 cents for e-liquid cartridges and fifteen per cent of the wholesale price of open system e-liquid sold, used, or possessed by a wholesaler or dealer on or after 7/1/2023. Defines and amends related terms. Makes conforming amendments.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

