

ACT 70

A Bill for an Act Relating to Taxation of Certain Foreign Manufacturing Corporations Warehousing Their Products Within the State.

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

SECTION 1. Chapter 121 of the Revised Laws of Hawaii 1955 is hereby amended by adding thereto the following new section:

“**Sec. 121-4.1.** (a) For the purposes of section 121-4(c), a foreign corporation engaged in the business of manufacturing without the State, having its manufactured products warehoused in this State by another person who is engaged in the business of warehousing in this State and whose compensation for providing such warehousing is included in the measure of the tax imposed by chapters 117 or 126, shall not be deemed to be carrying on a trade or business in this State if all of the following requirements are met:

(1) every delivery of sale of such products so warehoused is made at the warehouse to fill an order for such property procured by a representative (as defined in subsection (b)) from a seller licensed under chapter 117 and purchasing such property for purposes of resale;

(2) every order so procured was made subject to acceptance and was accepted by such corporation at an office located out of this State;

(3) no collection for the payment of the products delivered as

described in paragraph (1) of this subsection is made in this State by any of its employees or agents or by any representative; and

(4) except as provided in this section, it is not carrying on a trade or business in this State within the meaning of section 121-4(c).

(b) 'Representative' means a salesman, commission agent, broker or other person who is authorized or employed as an independent contractor and not as an employee by the foreign manufacturing corporation described in subsection (a) to assist such manufacturer in selling its products in this State, by procuring orders for such sale, and who carries on such activities in this State (it being immaterial whether such activities are regular or intermittent), but whose functions and authority do not include the accepting of orders for, or the making of deliveries of, or the collecting of payment for deliveries of, such products."

SECTION 2. Chapter 117 of the Revised Laws of Hawaii 1955 is hereby amended by adding to section 117-5 (at the end thereof) the following sentence and paragraph:

"A corporation deemed not to be carrying on a trade or business in this State under the provisions of section 121-4.1 shall nevertheless be deemed to be a wholesaler and shall be subject to the tax imposed by this chapter."

SECTION 3. This Act upon its approval shall apply to taxable years beginning on or after January 1, 1963.

(Approved May 20, 1963.) **H.B. 1156.**
