

**ACT 155**

A Bill for an Act Relating to Taxation.

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

**PART 1**

**SECTION 1.** Chapter 118 of the Revised Laws of Hawaii 1955, as amended, is hereby repealed.

**SECTION 2.** Chapter 119 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended to read as follows:

**“CHAPTER 119. USE TAX LAW.**

**“Section 119-1. Definitions, generally.** Whenever used in this chapter, unless otherwise required by the context:

“‘General excise tax law’ means chapter 117, as amended from time to time.

“‘Person’, ‘business’, ‘engaging in business’, ‘retailer’, ‘wholesaler’, ‘jobber’, and ‘contractor’ have the meanings defined by chapter 117.

“‘Import’ (or any nounal, verbal, adverbial, adjective or other equivalent of the term) includes importation into the State from any other part of the United States or its possessions or from any foreign country, whether in interstate or foreign commerce, or both.

“‘Property’ means tangible personal property, but does not include newspapers or other periodical publications purchased on the

subscription plan, issued at stated intervals as frequently as four times a year, and of the class admitted to the United States mails as second class matter under the laws and regulations governing the postal service on January 1, 1965.

“Purchase’ and ‘sale’ mean and refer to any transfer, exchange or barter, conditional or otherwise, in any manner or by any means, wheresoever consummated, of tangible personal property for a consideration.

“Purchaser’ means any person purchasing property and ‘importer’ means any person importing property; provided, that the terms ‘purchaser’ and ‘importer’ shall not include the State, its political subdivisions, or wholly owned agencies or instrumentalities of the State or a political subdivision; or the United States, its wholly owned agencies or instrumentalities, or any person immune from the tax imposed by this chapter under the Constitution and laws of the United States.

“Price’ means the total amount for which tangible personal property is purchased, valued in money, whether paid in money or otherwise, and wheresoever paid, provided that cash discounts allowed and taken on sales shall not be included.

“Seller’ means any person engaged in the business of selling tangible personal property, wheresoever engaged, but does not include the United States or its wholly owned agencies or instrumentalities, the State of Hawaii or a political subdivision thereof, or wholly owned agencies or instrumentalities of the State or a political subdivision.

“Unlicensed seller’ means any seller who, with respect to the particular sale, is not subject to the tax imposed by chapter 117, whether or not he holds a license under that chapter, but does not include any seller with respect to any sale which is expressly exempted from the tax imposed by chapter 117.

“Use’ (and any nounal, verbal, adjective, adverbial and other equivalent form of any of said terms), herein used interchangeably, means any use, whether such use is of such nature as to cause the property to be appreciably consumed or not, or the keeping of such property for such use or for sale, and shall include the exercise of any right or power over tangible personal property incident to the ownership of that property, but the term ‘use’ shall not include (1) temporary use of property, not of a perishable or quickly consumable nature, where such property is imported into the State for temporary use (not sale) therein by the person importing the same and is not intended to be, and is not, kept permanently in the State (as for example without limiting the generality of the foregoing language: (i) in the case of a contractor importing permanent equipment for the performance of a construction contract, with intent to remove, and who does remove, such equipment out of the State upon completing the contract; (ii) in the case of moving picture films imported for use in theaters in the State with intent or under contract to transport the same out of the State after completion of such use; (iii) in the case of a transient visitor importing an automobile or other belongings into the State to be used by him while therein but which are to be used and are removed upon his departure from the State);

(2) use by the taxpayer of property acquired by him solely by way of gift; (3) use which is limited to the receipt of articles and the return thereof, to the person from whom acquired, immediately or within a reasonable time either after temporary trial or without such trial; (4) use of goods imported into the State by the owner of a vessel or vessels engaged in interstate or foreign commerce and held for and used only as ship stores for such vessels; (5) the use or keeping for use of household goods, personal effects and private automobiles imported into the State for nonbusiness use by a person who (i) acquired them in another state, territory, district or country, (ii) at the time of such acquisition was a bona fide resident of another state, territory, district or country, (iii) acquired the property for use outside the State, and (iv) made actual and substantial use thereof outside this State; provided, that, as to an article acquired less than three months prior to the time of its importation into the State it shall be presumed, until and unless clearly proved to the contrary, that it was acquired for use in the State and that its use outside the State was not actual and substantial.

"With regard to purchases made and distributed under the authority of chapter 176 or under the authority of the Fish Marketing Act under chapter 175A, a cooperative association shall be deemed the user thereof.

"'Value' means fair and reasonable cash value at the time of accrual of the tax.

"'Representation' refers to any or all of the following: (a) a seller's being present in the State, and (b) a seller's having in the State a salesman, commission agent, manufacturer's representative, broker or other person who is authorized or employed by such seller to assist such seller in selling property for use or consumption in the State, by procuring orders for such sales, making collections or deliveries or otherwise, and (c) a seller's having in the State a person upon whom process directed to such seller from the courts of the State may be served, including the director of regulatory agencies and the deputy director in the cases provided in section 172-150.

**"Section 119-2. Imposition of tax; exemptions.** There is hereby levied an excise tax on the use in this State of tangible personal property which is imported, or purchased from an unlicensed seller, for use in this State. The tax imposed by this chapter shall accrue when such property is acquired by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rates of the tax hereby imposed and the exemptions thereof are as follows:

"(a) If the importer or purchaser is licensed under chapter 117 and is (1) a wholesaler or jobber importing or purchasing for purposes of resale, or (2) a manufacturer importing or purchasing material or commodities which are to be incorporated by such manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold in such manner as to result in a further tax on the activity of the manufacturer as such manufacturer

or as a wholesaler, and not as a retailer, there shall be no tax, provided, that if such wholesaler, jobber, or manufacturer is also engaged in business as a retailer (so classed under chapter 117), paragraph (b) shall apply to him, but the director of taxation shall refund to him, in the manner provided under section 115-28(c) such amount of tax as he shall, to the satisfaction of the director, establish to have been paid by him to the director with respect to property which has been used by him for the purposes stated in this paragraph.

“(b) If the importer or purchaser is licensed under chapter 117 and is (1) a retailer or other person importing or purchasing for purposes of resale, not exempted by paragraph (a), or (2) a manufacturer importing or purchasing material or commodities which are to be incorporated by such manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold at retail in this State, in such manner as to result in a further tax on the activity of the manufacturer in selling such products at retail, or (3) a contractor importing or purchasing material or commodities which are to be incorporated by such contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses, the tax shall be one-half of one per cent of the purchase price of such property, if the purchase and sale are consummated in Hawaii; or, if there is no purchase price applicable thereto, or if the purchase or sale is consummated outside of Hawaii, then one-half of one per cent of the value of such property.

“(c) In all other cases, four per cent of the value of such property.

**“Section 119-3. Application of tax, etc.**

(a) The tax imposed by this chapter shall not apply to any property, or to any use of such property, which cannot legally be so taxed under the Constitution or laws of the United States, but only so long as, and only to the extent to which, the State is without power to impose such tax.

“(b) The tax imposed by this chapter shall not apply to any use of property the transfer of which property to, or the acquisition of which by, the person so using the same, has actually been or actually is taxed under chapter 117.

“(c) The tax imposed by this chapter shall be paid only once upon or in respect of the same property; provided, that nothing in this chapter contained shall be construed to exempt any property or the use thereof from taxation under any other law of the state.

“(d) The tax imposed by this chapter shall be in addition to any other taxes imposed by any other laws of the state, except as otherwise specifically provided herein; provided, that if it be finally held by any court of competent jurisdiction, that the tax imposed by this chapter may not legally be imposed in addition to any other tax or taxes imposed by any other law or laws with respect to the same property or the use thereof, then this chapter shall be deemed not to

apply to such property and the use thereof under such specific circumstances, but such other laws shall be given full effect with respect to such property and use.

“(e) The tax imposed by this chapter shall not apply to any use of property exempted by section 119-4.

“**Section 119-4. Certain property used by producers.** (a) If a licensed producer, or a cooperative association acting under the authority of chapter 176 in order to sell to such producer, imports into the State or acquires in the State, feed, hatching eggs, or poultry or animal young, in such manner and for such purposes that if the feed, hatching eggs, poultry or animal young so imported or acquired had been purchased in the State, clause (d) of section 117-5 would apply, or (b) if a licensed producer, or a cooperative association under the authority of chapter 176 or the Fish Marketing Act under chapter 175A in order to sell to such producer, imports into the State, or acquires in the State, seed or bait, in such manner and for such purposes that if the said seed or bait so imported or acquired had been purchased in the State, clause (e) of section 117-5, would apply, then:

“(1) If the producer is engaged in the sale of his products at retail or in any manner other than at wholesale, the tax upon use of property in the State imposed by section 119-2(b) shall apply the same as in the case of a purchaser who is a licensed retailer.

“(2) In other such cases no tax shall be imposed under this chapter.

“**Section 119-5. Returns.** On or before the twentieth day of each calendar month, any person who has become liable for the payment of a tax under this chapter during the preceding calendar month in respect of any property or the use thereof, shall file a return with the assessor of the taxation division in which such property was held when such tax first became payable, or with the director at Honolulu, setting forth a description of the property and the character and quantity thereof in sufficient detail to identify the same or otherwise in such reasonable detail as the director by regulations shall require, and the purchase price or value thereof as the case may be. Such return shall be accompanied by a remittance in full of the tax, computed at the rate specified in section 119-2 upon the price or value so returned. Any such tax remaining unpaid after said twentieth day following the end of the calendar month during which the same first became payable shall become delinquent; provided, that a receipt from a seller required or authorized to collect the tax, given to a taxpayer in accordance with the provisions of section 119-6, shall be sufficient to relieve such taxpayer from further liability for the tax to which such receipt may refer, or for the return thereof.

“Notwithstanding the foregoing, a taxpayer may be eligible to file his return required under the provisions of this section and make payments thereon on a quarterly basis during the calendar year, such return and payment to be made within twenty days after the close of each quarter, to wit, on or before April 20, July 20, October 20 and January 20, if he possesses a valid and current permit to file his

general excise tax return and to make payments thereon on a quarterly basis issued by the director pursuant to the provisions of section 117-25. A taxpayer may also be eligible to make monthly payments based on his estimated quarterly liability with a reconciliation return at the end of each quarter during the calendar year, as heretofore provided, if he possesses a valid and current permit to file quarterly reconciliation general excise tax returns and to make monthly payments, issued by the director pursuant to the provisions of section 117-25.

“On or before April 20 in each year every person who has become liable for the payment of taxes both under this chapter and also under chapter 117 during the preceding calendar year (or during the preceding tax year if such person has established a tax year other than the calendar year), shall file a return summarizing his liability under this chapter for such year, in such form as the director shall prescribe and shall file it with his annual return of general excise taxes.

**“Section 119-6. Collection of tax by seller; penalty.** (a) For purposes of the taxes due under section 119-2(c), every seller having in the State, regularly or intermittently, any property, tangible or intangible, any place of business, or any representation as hereinabove defined, (and irrespective of his having or not having qualified to do business in the State) shall, if such seller makes sales of property for use in the State (whether or not such sales are made in the State) collect from the purchaser the tax imposed by section 119-2(c) on the use of the property so sold by him. Such collection shall be made within twenty days after the accrual of the tax or within such other period as shall be fixed by the director upon the application of the seller, and such seller shall give to the purchaser a receipt therefor in the manner and form prescribed by the director; provided that this subsection shall not apply to vehicles registered under section 160-8.

“(b) The director, in his discretion, upon application therefor and under terms and conditions prescribed by him, may relieve any seller of the duty of collecting and paying over the tax imposed by subsection (a) above, if he is satisfied that the tax can be effectively collected by other means. Exemption from the duty of collecting the tax may be cancelled at any time when the director finds that the tax cannot be effectively collected by other means. The director likewise may terminate the duty and authority of any seller to collect and pay over the tax imposed by subsection (a) above if he shall find, as to such seller, that the tax cannot be effectively collected by such means.

“(c) The director, in his discretion, upon application therefor and under terms and conditions prescribed by him, may authorize the collection of the tax imposed by this chapter by a seller not otherwise required to collect the tax. The seller, when so authorized, shall have the duty of collecting and paying over the tax in the same manner and subject to the same requirements as set out in subsection (a). Such authority may be cancelled at any time when, in the judgment of the director, the tax can more effectively be collected by other means.

“(d) In case any seller required or authorized to collect the tax under this chapter fails to collect the same, or having collected the tax fails to pay over the same as provided by this chapter, he shall nevertheless be personally liable to the State for the amount of such tax, but it shall be a defense to such liability that the indebtedness for the price is a worthless account actually charged off for income tax purposes, if and to the extent that the collections of the price do not equal the tax.

“(e) Every seller required or authorized to collect the tax shall make returns and payments of the tax at the same time and in the same manner as is provided with respect to taxpayer by section 119-5. All provisions of this chapter with respect to returns, reports, records, payments, penalties and interest, appeals, investigations, and audits, assessments, tax collections procedure, criminal offenses and the general administrative powers and duties of the director, shall apply to such sellers the same as to taxpayers.

“(f) The tax collected pursuant to this section shall be held in trust for the State and for payment to the proper collecting officer in the manner and at the time required by this chapter. Any person collecting such tax who shall appropriate or convert the same to his own use or to any use other than the payment of the tax as herein provided, and who shall fail to pay over the amount of tax so collected at the time required by this chapter, shall be deemed guilty of an embezzlement of property of the State and shall be fined more than five times the amount of money so embezzled or imprisoned at hard labor not more than ten years, and any failure by the person so collecting the tax to pay the same over within the time provided by this chapter, after demand therefor, shall be taken and held to be prima facie evidence of the embezzlement.

“**Section 119-7. Audits; additional assessments; refunds.** All of the provisions of sections 117-31 to 117-35 of the general excise tax law are hereby made applicable to the taxes imposed by this chapter, to the refunding of overpayments thereof and to assessments, investigations and audits in connection therewith, for which purpose any references therein to ‘gross income’ or ‘gross proceeds of sale’ shall be deemed to refer to the purchase price or value, as the case may be, subject to tax under this chapter, and any references to the ‘annual return’ shall, if the taxpayer is not required to file an annual return under this chapter, be deemed to refer to the monthly return mentioned in the first paragraph of section 119-5.

“**Section 119-8. Appeal, correction of assessment.** If any person having made the return and paid the tax as provided by this chapter feels aggrieved by the assessment so made upon him by the director, he may, provided the tax so assessed shall have been paid, appeal the assessment in the manner and within the time and in all other respects as provided in section 121-46, for which purpose the word ‘income’ shall be deemed to refer to purchase price or value, as the case may be. The hearing and disposition of such appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 116.

**“Section 119-9. Records.** It shall be the duty of every person who is engaged in any business in the State and who is required under this chapter to make returns, to keep in the English language in the State and preserve for a period of five years, books of account or other records in sufficient detail to enable the director, as far as reasonably practicable, to determine whether or not any taxes imposed by this chapter are payable in respect of the property concerned, and if so payable, the amount thereof.

**“Section 119-10. Penalties.** Penalties and interest shall be added to and become a part of the tax, when and as provided by section 115-43.

**“Section 119-11. Collection of taxes by assumpsit or distraint; concurrent jurisdiction of district magistrates.** Any tax which is delinquent under this chapter may be collected:

“(a) By action in the name of the director or any collector or assistant collector of taxes, in assumpsit, with or without attachment of the real or personal property of the person liable, and it shall be unnecessary, in order to secure the issuance of the writ of attachment, for the officer bringing such action to file any affidavit, other than the usual sworn complaint in ordinary assumpsit actions where no attachment is sought, with a prayer for such writ. In all such actions the several district magistrates shall have concurrent jurisdiction with the circuit courts, irrespective of the amount claimed.

“(b) By distraint in the manner provided by section 115-30.

**“Section 119-12. Offenses, penalties; fines state realizations.** It shall be unlawful for any person to refuse to make any return or report required under this chapter. Section 117-46 is hereby made applicable to and with respect to all taxes imposed under, all returns or reports required by or pursuant to, all taxpayers, officers of corporations and other persons affected by, and all violations of, this chapter, in so far as the same are not inconsistent with this chapter, in the same manner as nearly as may be, as in similar cases covered by the general excise tax law.

“Notwithstanding any other laws to the contrary, the proceeds of all fines (exclusive of costs) imposed for convictions under this chapter shall be state realizations and shall be paid into the general fund of the State.

**“Section 119-13. Other provisions of general excise tax law applicable.** In respect of (a) the examination of books and records and of taxpayers and other persons, (b) procedure and powers upon failure or refusal by a taxpayer to make a return or a proper return, and (c) the general administration of this chapter, the director shall have all the rights and powers conferred upon him by the general excise tax law with respect to taxes thereby or thereunder imposed; and, without restriction upon the aforesaid rights and powers, sections 117-9, 117-25 and 117-31 to 117-36 are hereby made applicable to and with respect to the taxes and the taxpayers, tax officers and other persons, and the matters and things affected or covered by this



chapter, insofar as not inconsistent with the provisions of this chapter, in the same manner, as nearly as may be, as in similar cases covered by the general excise tax law.

**"Sec. 119-14. Taxes state realizations.** All taxes collected under this chapter shall be state realizations.

**"Section 119-15. Short Title.** This chapter may be cited as the 'use tax law.'

**"Section 119-16. Rules and regulations.** The director of taxation may adopt and promulgate rules and regulations to carry out the purposes of this chapter."

**SECTION 3.** This Part shall not be construed as affecting in any manner, to the detriment of the State, any taxes, interest, fines, penalties, forfeitures or other liabilities, or obligations, existing, due or incurred prior to the taking effect of this Part, nor as affecting the liability of any person to prosecution for any misdemeanor or other criminal offenses committed prior to the taking effect of this Part under any statute hereby amended, repealed, or superseded, and all such taxes, interest, fines, penalties, forfeitures, liabilities, obligations, misdemeanors and other offenses may be assessed, enforced, collected, prosecuted or punished, as the case may be, in the same manner, to the same extent and subject to the same conditions, as if this Part had not been enacted.

**SECTION 4.** Section 129-9, Revised Laws of Hawaii 1955, as amended, is hereby further amended by substituting the words "use tax" whenever the words "consumption tax" are used and by eliminating therefrom the words "compensating tax."

**SECTION 5.** This Part shall take effect on January 1, 1966.

**PART II**

**SECTION 6.** Section 125-3, Revised Laws of Hawaii 1955, as amended, is hereby further amended by substituting the words "forty per cent" for the words "twenty per cent" appearing in the first sentence thereof.

**SECTION 7.** This Part shall take effect on July 1, 1965.

**PART III**

**SECTION 8.** Section 124-4, Revised Laws of Hawaii 1955, as amended, is hereby further amended by deleting therefrom the words "sixteen per cent" and substituting therefor the words "twenty per cent" appearing in the first sentence thereof.

**SECTION 9.** This Part shall take effect on July 1, 1965.

**PART IV**

**SECTION 10.** Section 121-23, Revised Laws of Hawaii 1955, as amended, is hereby further amended by amending subsection (a) thereof in the following respects:

(a) By substituting the words "3.08 per cent" for the words "2 $\frac{3}{4}$  per cent" appearing in the second paragraph thereof.

(b) By substituting the words "5.85 per cent" for the words "5 per cent" appearing in the second paragraph thereof.

(c) By substituting the words "6.435 per cent" for the words "5½ per cent" appearing in the second paragraph thereof.

SECTION 11. Section 121-23, Revised Laws of Hawaii 1955, as amended, is hereby further amended by amending subsection (b) thereof in the following respects:

(a) By substituting the words "5.85 per cent" for the words "five per cent" thereof.

(b) By substituting the words "6.435 per cent" for the words "five and one-half per cent" thereof.

(c) By substituting the words "3.08 per cent" for the words "two and three-quarters per cent" thereof.

SECTION 12. Section 121-23, Revised Laws of Hawaii 1955, as amended, is hereby further amended by amending subsection (c) thereof by substituting the words "3.08 per cent" for the words "two and three-quarters per cent" wherever they appear therein.

SECTION 13. This Part shall apply with respect to taxable years beginning on or after January 1, 1966. If the taxable year includes the effective date of the tax rate changes (unless that date is the first day of the taxable year), then, (1) tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and (2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year.

#### PART V

SECTION 14. Chapter 117, Revised Laws of Hawaii 1955, as amended, is hereby amended in the following respects:

(a) Section 117-14, subsection (b) (1), as amended, is hereby amended by deleting therefrom the words, "three and one-half per cent," and inserting in lieu thereof the words, "four per cent."

(b) Section 117-14, subsection (c) (1), as amended, is hereby amended by deleting therefrom the words, "three and one-half per cent," and inserting in lieu thereof the words, "four per cent."

(c) Section 117-14, subsection (d), as amended, is hereby amended by deleting therefrom the words, "three and one-half per cent," and inserting in lieu thereof the words, "four per cent."

(d) Section 117-14, subsection (e), as amended, is hereby amended by deleting therefrom the words, "three and one-half per cent," and inserting in lieu thereof the words, "four per cent."

(e) Section 117-14, subsection (f), as amended, is hereby amended by deleting therefrom the words, "three and one-half per cent," and inserting in lieu thereof the words, "four per cent."

(f) Section 117-14, subsection (f-1), as amended, is hereby amended by deleting therefrom the words, "one and one-half per cent," and inserting in lieu thereof the words, "two per cent."

(g) Section 117-14, subsection (g), as amended, is hereby amended by deleting therefrom the words, "three and one-half per cent," and inserting in lieu thereof the words "four per cent."

(h) Section 117-14, subsection (h), as amended, is hereby amended by deleting therefrom the words, "three and one-half per cent," and inserting in lieu thereof the words "four per cent."

(i) Section 117-14.5, as amended, is hereby amended by deleting therefrom the words, "three and one-half per cent," and inserting in lieu thereof the words, "four per cent."

(j) Section 117-14.6, subsection (b), is hereby amended by deleting therefrom the words, "three and one-half per cent," and inserting in lieu thereof the words, "four per cent."

(k) Section 117-14.6, subsection (e), as amended, is hereby amended by deleting therefrom the words, "three and one-half per cent," and inserting in lieu thereof the words, "four per cent."

(l) Section 117-16, subsection (c), as amended, is hereby amended by deleting therefrom the words, "three and one-half per cent," and inserting in lieu thereof the words, "four per cent."

SECTION 15. This Part shall take effect on July 1, 1965 and shall apply to taxes accruing on and after said date.

#### PART VI

SECTION 16. Section 126-5, subsection (a), Revised Laws of Hawaii 1955, as amended, is hereby amended in the following respects:

(a) By deleting therefrom the words, "five and one-half per cent," and substituting therefor the words, "5.885 per cent," wherever they appear.

(b) By deleting therefrom the words "one fourth of one per cent," and substituting therefor the words, "two thousand six hundred seventy five ten thousandth of one per cent (.2675%)."

SECTION 17. Section 126-5, subsection (b), Revised Laws of Hawaii 1955, as amended, is hereby amended by deleting therefrom the words, "five per cent," and substituting therefor the words, "5.35 per cent."

SECTION 18. Section 126-5.1, Revised Laws of Hawaii 1955, as amended, is hereby further amended by deleting therefrom the words, "three and one-half per cent," and substituting therefor the words, "four per cent."

SECTION 19. Section 126-7.5, subsection (c), Revised Laws of Hawaii 1955, as amended, is hereby amended by deleting therefrom the words, "three and one-half per cent," and substituting therefor the words, "four per cent" appearing in the second paragraph.

SECTION 20. This Part shall take effect on January 1, 1966 so that the gross income received for the calendar year 1965 and for calendar years thereafter shall be subject to the tax under Chapter 126 as increased by this Part; provided, however, that if any other legislation which provides for a new method of taxing public utilities and which replaces the present tax schedule applicable to public

utilities under Chapter 126, Revised Laws of Hawaii 1955, as amended, is enacted into law in this session of the legislature, then sections 16 and 17 shall not become effective.\*

#### PART VII

SECTION 21. Section 127-4, subsection (a), Revised Laws of Hawaii 1955, as amended, is hereby amended by deleting therefrom the words, "ten per cent," and substituting therefor the words, "11.7 per cent."

SECTION 22. This Part shall take effect on January 1, 1966 so that the tax rate as increased by this Part shall apply to the entire net income received for the calendar year preceding January 1, 1966 and for calendar years thereafter. In the case of a taxpayer operating on a fiscal year basis, the tax rate so increased shall apply to the entire net income received for the fiscal year in which January 1, 1966 occurs and for fiscal years thereafter.

#### PART VIII

SECTION 23. Section 181-313(b), Revised Laws of Hawaii 1955, as amended, is hereby further amended by deleting therefrom the words "cash surrender values paid."

SECTION 24. Section 181-313, Revised Laws of Hawaii 1955, as amended, is hereby amended by amending subsection (a) thereof in the following respects:

(a) By substituting the words "2.6325 per cent" for the words "two and one-quarter per cent" appearing in the first paragraph thereof.

(b) By substituting the words "3.8025 per cent" for the words "three and one-quarter per cent" appearing in the first paragraph thereof.

SECTION 25. Section 181-313, Revised Laws of Hawaii 1955, as amended, is hereby amended by amending subsection (b) thereof in the following respects:

(a) By substituting the words "1.755 per cent" for the words "one and one-half per cent" appearing in the first paragraph thereof.

(b) By substituting the words "2.925 per cent" for the words "two and one-half per cent" appearing in the first paragraph thereof.

SECTION 26. Section 181-313, Revised Laws of Hawaii 1955, as amended, is hereby amended by amending subsection (c) thereof by substituting the words "eight thousand seven hundred seventy-five ten thousandth of one per cent (.8775%)" for the words "three-quarters of one per cent" appearing in the first paragraph thereof.

SECTION 27. Section 181-333, Revised Laws of Hawaii 1955, as amended, is hereby amended by substituting the words "4.68 per cent" for the words "four per cent" appearing in the first paragraph thereof.

\* Sections 16 and 17 superseded by sections 30 and 31 of Act 201.

SECTION 28. Section 23 shall take effect on July 1, 1966. Sections 24 through 27 shall take effect on January 1, 1966 so that the rates as increased by this Part shall apply to all premiums and gross underwriting profit received during the calendar year ending December 31, 1965 and thereafter.

PART IX

SECTION 29. Section 129-9 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by repealing the entire section and substituting the following:

**"Section 129-9. Distribution of grants-in-aid of state general fund to the several counties.**

"(a) Percent of general revenues. The several counties shall receive from the state general fund an amount equal to 0.505 per cent of the tax base attained for the fiscal year ending in the previous calendar year, which tax base shall be for all collections of the general excise tax, use tax and public service company tax which have been made at the rate of three and one-half per cent or more, excepting only taxes collected from public utilities as defined in section 104-1. The director of taxation shall determine the amount to be distributed to the several counties.

"(b) Minimum amount. Four million dollars of the amount determined to be available to the counties as hereinabove set forth shall be distributed to the several counties in equal amounts.

"(c) Fiscal needs and capacities. Each county shall receive a portion of the remaining amount by adding the amount determined to reflect its relative fiscal capacity and the amount determined to measure its relative fiscal need, provided, however, that twenty-five per cent of such portion shall be distributed only upon the approval of the governor of a plan or program submitted by the county, which plan or program the governor finds, in his discretion, raises, improves or maintains a justifiable level of services performed by the county; the governor may as a condition to his approval of such plan or program require the county to provide additional county funds to implement such plan or program, provided, however, that the amount of such county funds shall not be more than twice the amount of the state funds allotted by the governor. Any amounts not allotted by the governor during the fiscal year shall lapse into the general fund. The amounts reflecting relative fiscal capacity and measuring relative fiscal need shall be determined as follows:

"1. The amount determined to reflect a county's relative fiscal capacity shall be arrived at by the use of the following formula:

"(i) Determine the per capita net taxable real property by dividing the average of the net taxable real property for the preceding five calendar years for that county as certified by the director of taxation pursuant to the provisions of section 129-2(e) by the average of the civilian population in that county for the preceding five calendar years.

"(ii) Determine the per capita net taxable real property for the entire state by dividing the sum of the average of the net taxable real property for the preceding five calendar years for each of the

several counties as certified by the director of taxation pursuant to the provisions of section 129-2(e) by the average of the civilian population in the entire state for the preceding five calendar years.

“(iii) Subtract that county’s per capita net taxable real property as determined by subsection (i) above from the per capita net taxable real property for the entire state as determined by subsection (ii) above and multiply this result by the average civilian population in that county for the preceding five calendar years.

“(iv) Multiply the result obtained in subsection (iii) above the average effective tax rate. The average effective tax rate is obtained by dividing the total annual real property tax realizations for all the counties for the preceding five calendar years by the total net taxable real property valuations in the entire state for the preceding five calendar years.

“(v) Multiply the result obtained in subsection (iv) above by a weight of 2.

“2. The amount determined to measure a county’s relative fiscal need shall be arrived at by multiplying that county’s civilian population percentage (that is, the proportion that the average of civilian population for the preceding five years in that county bears to the average of civilian population in the entire state for the preceding five years) by the difference between the amount available for distribution to the several counties as determined by subsection (a) and the minimum amount distributed under subsection (b).

“(d) **Civilian population.** For the purposes of this section, the civilian population in each county shall be determined by the state director of health as of July 1 of each year from the best information available, and this determination shall be conclusive.

“(e) **Monthly distribution.** The director of finance of the State of Hawaii, in monthly installments, on or before the 15th day of each month shall pay the monthly share of the amounts as determined above to the county treasurer of each county, or in the case of the City and County of Honolulu to the director of finance, to become a general realization of the county, expendable as such, except as otherwise provided by law, and provided, however, that the director of finance of the State of Hawaii may make periodic distributions to the counties other than on a monthly basis.”

**SECTION 30.** Effective date. This Part shall take effect on July 1, 1965, provided however, that all general excise, consumption, compensating and public service company taxes collected and accounted for by the State as of June 30, 1965 shall be distributed to the several counties in accordance with the provisions of the law prior to the effective date of this Part.

#### PART X

**SECTION 31.** Chapter 121, Revised Laws of Hawaii 1955, as amended, is hereby further amended in the following respects:

(a) Section 121-5, subsection (a) (4), is hereby repealed. Subsections 121-5 (a) (5), (6) and (7) shall be redesignated as subsections 121-5 (a) (4), (5) and (6), respectively.

(b) Section 121-8, subsection (a), as amended, is hereby amended to read as follows:

“(a) **Tax on individual; rate.** There shall be assessed, levied, collected, and paid, for each taxable year on the taxable income of every individual, a tax in the following amounts:

<b>“If the taxable income is:</b>	<b>The tax shall be:</b>
“Not over \$500	2.25% of taxable income
“Over \$500, but not over \$1,000	\$11.25 plus 3.25% of excess over \$500
“Over \$1,000, but not over \$1,500	\$27.50 plus 4.5% of excess over \$1,000
“Over \$1,500, but not over \$2,000	\$50.00 plus 5% of excess over \$1,500
“Over \$2,000, but not over \$3,000	\$75.00 plus 6.5% of excess over \$2,000
“Over \$3,000, but not over \$5,000	\$140.00 plus 7.5% of excess over \$3,000
“Over \$5,000, but not over \$10,000	\$290.00 plus 8.5% of excess over \$5,000
“Over \$10,000, but not over \$14,000	\$715.00 plus 9.5% of excess over \$10,000
“Over \$14,000, but not over \$20,000	\$1,095 plus 10% of excess over \$14,000
“Over \$20,000, but not over \$30,000	\$1,695 plus 10.5% of excess over \$20,000
“Over \$30,000	\$2,745.00 plus 11% of excess over \$30,000”

(c) Section 121-8, subsection (b), as amended, is hereby amended by deleting the words “three per cent”, appearing at the end of the third paragraph of this subsection and inserting in lieu thereof, the words “four per cent”.

(d) Section 121-16, subsection (c), as amended, is hereby amended by deleting the words “six per cent” and inserting in lieu thereof the words “eight per cent”.

**SECTION 32.** Section 31 shall apply with respect to taxable years beginning on or after January 1, 1966. If the taxable year includes the effective date of the tax rate changes (unless that date is the first day of the taxable year), then, (1) tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and (2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year.

PART XI

**SECTION 33.** Chapter 121, Revised Laws of Hawaii 1955, as amended, is hereby amended by adding thereto the following section to be appropriately designated and to read as follows:

**“Sec. 121- . (a) Tax credits on account of consumer-type taxes.** Each taxpayer who files an individual net income tax return for a taxable year and who is not claimed as a dependent by another taxpayer for individual net income tax purposes may claim tax credits on account of state consumer-type taxes to which the taxpayer has directly or indirectly been subjected during the taxable year for which the income tax return is being filed; provided, however, that a husband and wife filing separate returns for a taxable year for which a joint return could have been made by them shall claim only the tax credit to which they would have been entitled had a joint return been filed; and provided that an individual who has no income or no income taxable under the provisions of this chapter and who is not claimed as a dependent by a taxpayer for individual net income tax purposes may also claim tax credits as set forth in this section. For the purpose of this section, ‘taxpayer’ shall mean every person eligible to claim tax credits on account of consumer-type taxes paid.

**“(b) Modified adjusted gross income.** Each taxpayer who claims tax credits as set forth in this section shall declare in addition to his income taxable under this chapter, the following income presently exempt from income taxation: social security benefits, unemployment compensation benefits, workmen’s compensation benefits, interest on tax-free securities, public assistance payments, pensions and annuities, cost of living allowances paid to federal employees, proceeds from life insurance, and, in the case of a nonresident individual, in addition to the income heretofore listed, all other income received which is not presently taxable under this chapter but which would be taxable had a resident individual received such income. The modified gross income of a taxpayer for the purposes of this section shall be the sum of his adjusted gross income for income tax purposes, if any, and the income exempt from income taxation, if any, declared pursuant to the provisions of this subsection.

**“(c) Tax credit schedule.** Each taxpayer may claim tax credits in the amount indicated for each modified adjusted gross income bracket as shown in the schedule below.

<b>Modified “Adjusted Gross Income Brackets</b>	<b>Tax Credits Per Qualified Exemption</b>
“Under \$1,100	\$18.00
“\$1,100 to \$1,199	15.30
“\$1,200 to \$1,299	12.60
“\$1,300 to \$1,399	10.80
“\$1,400 to \$1,499	9.00
“\$1,500 to \$1,599	8.10
“\$1,600 to \$1,699	7.20
“\$1,700 to \$1,799	6.30
“\$1,800 to \$1,999	5.40
“\$2,000 to \$2,199	4.50
“\$2,200 to \$2,399	3.60
“\$2,400 to \$2,899	2.70
“\$2,900 to \$3,699	1.80
“\$3,700 to \$6,299	.90
“\$6,300 and over	.45



“(d) **Qualified exemption defined.** For the purposes of this section, a qualified exemption is defined to include those exemptions permitted under this chapter; provided that the person for whom exemption is claimed has physically resided in the State for more than nine months during the taxable year; and provided further that multiple exemptions shall not be granted because of advanced age or deficiencies in vision.

“(e) **Tax credits to be deducted from income tax liability, if any; refunds.** The tax credits claimed by a taxpayer pursuant to the provisions of this section shall be deductible from the taxpayer’s individual net income tax liability, if any, for the tax year in which they are properly claimed. In the event the tax credits claimed by a taxpayer, and allowed, exceed the amount of the income tax payments due from the taxpayer, the excess of credits over payments due shall be refunded to the taxpayer, provided that tax credits properly claimed by an individual who has no income tax liability, and allowed, shall be paid to the individual; and further provided that no refunds or payments on account of the tax credits allowed by this section shall be made for amounts less than \$3.

“(f) **Forms and rules and regulations.** The director of taxation shall prepare and prescribe the appropriate form or forms to be used by taxpayers in filing claims for tax credits hereunder. The form shall be made an integral part of the individual net income tax return. He shall also be empowered to promulgate such rules and regulations as may be necessary to effectuate the purposes of this section pursuant to chapter 6C.

“(g) **Assessments and refunds.** All of the provisions relating to assessments and refunds under this chapter and under section 115-28 (c) shall be made applicable hereto and shall apply with equal force to the tax credits hereunder.”

SECTION 34. Chapter 121, Revised Laws of Hawaii 1955, as amended, is hereby amended by adding thereto a new section to be appropriately designated and to read as follows:

“Sec. 121- (a) **Tax credits for students attending institutions of higher education and for dependent children attending school in grades kindergarten to twelve.** For the purposes of this section, an institution of higher education is defined to include technical schools, institutes, junior colleges, colleges, universities, and like institutions offering a formal educational program of a professional, academic, or occupational nature beyond the high school level.

“(b) For each personal exemption allowed a taxpayer under the Internal Revenue Code and section 121-11 who was duly registered and in attendance as a student in an institution of higher education for not less than one-half of the course work of a full-time student at such institution and for not less than four months of the taxable year for which an individual net income tax return was filed, there shall be allowed tax credits in the amount indicated for each adjusted gross income tax bracket as shown in the schedule below.

“(c) For each dependent child claimed as an exemption who was enrolled and in attendance as a student at school in grades kindergarten through twelve for not less than four months of the taxable year for which an individual net income tax return was filed, there shall be allowed tax credits in the amount indicated for each adjusted gross income tax bracket as shown in the schedule below.

“Adjusted Gross Income Brackets	Tax Credits per Exemption Attending:	
	K-12	An Institution of Higher Education
Under \$3,000	\$20	\$50
\$3,000 to \$3,199	17	45
\$3,200 to \$3,399	14	40
\$3,400 to \$3,599	12	35
\$3,600 to \$3,799	10	30
\$3,800 to \$3,999	8	25
\$4,000 to \$4,199	7	20
\$4,200 to \$4,399	6	15
\$4,400 to \$4,599	5	10
\$4,600 to \$4,799	4	8
\$4,800 to \$4,999	3	5
\$5,000 and over	2	2

“(d) The tax credits claimed by a taxpayer pursuant to the provisions of this Section shall be deductible from the taxpayer’s individual net income tax liability, if any, for the tax year in which they are properly claimed, provided, however, that a husband and wife filing separate returns for a taxable year for which a joint return could have been made by them shall claim only the tax credits to which they would have been entitled had a joint return been filed. In the event the tax credits claimed by a taxpayer, and allowed, exceed the amount of the income tax payments due from the taxpayer, the excess of credits over payments due shall be refunded to the taxpayer; provided that tax credits properly claimed by an individual who has no income tax liability, and allowed, shall be paid to the individual; and further provided that no refunds or payments on account of the tax credits allowed by this section shall be made for amounts less than \$3.

“(e) The director of taxation shall prepare and prescribe the appropriate form or forms to be used by taxpayers in filing claims for tax credits hereunder. He may also require that the taxpayer furnish reasonable information in order that he may ascertain the validity of the claims for tax credits made pursuant to the provisions of this section and promulgate any other rules and regulations as may be necessary to effectuate the purposes of this section pursuant to chapter 6C.

“(f) All of the provisions relating to assessments and refunds under this chapter and under section 115-28(c) shall be made applicable hereto and shall apply with equal force to the tax credits hereunder.”

SECTION 35. This part shall apply to individual net income tax return filed in 1966 for income earned during the calendar year 1965 and thereafter.

PART XII

SECTION 36. Chapter 128 of the Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding thereto a new section, to be appropriately numbered, and to read as follows:

**"Sec. 128- . Cost of assessment and collection.** The costs of assessment and collection of real property taxes for the preceding year shall be withheld from payment to the several counties by the State out of the real property taxes collected for the current year in reimbursement of the costs of the assessment and collection incurred by the State. Such cost of assessment and collection of real property taxes shall be borne by each of the several counties as the total assessed valuation for that county proportionately bears to the total assessed valuation for the entire State for the preceding calendar year. The Director of Taxation shall, no later than January 31 of the current tax year, furnish each board and council with a calculation, certified by him as being as nearly accurate as may be, of the prorata share of the costs of the assessment and collection of real property taxes to be borne by each of the several counties.

"For purposes of this section, the costs of assessment and collection of real property taxes shall include any and all costs, direct or indirect, which are deemed necessary and proper to effectively administer the provisions of this chapter."

SECTION 37. Section 129-8, Revised Laws of Hawaii 1955, as amended, is hereby further amended by amending the third sentence of the first paragraph thereof to read as follows:

"The director of finance shall also retain from time to time sufficient amounts to reimburse the State for the costs of assessment and collection of real property taxes incurred by the State, as provided for in section 128- to become a general fund realization of the State, and the director shall then pay the remaining balance to the treasurer of such county, as soon as possible after the property taxes have been paid into the state treasury, or after the disposition of any tax appeal, as the case may be."

SECTION 38. This Part shall take effect upon its approval so that commencing the calendar year 1965 and thereafter the costs incurred shall be reimbursed to the State in 1966 and thereafter.

SECTION 39. If any Part, section, sentence, clause or phrase of this Act, or its application to any person or circumstances, is for any reason held to be unconstitutional or invalid, the remaining portions of this Act, or the application of this Act to other persons or circumstances, shall not be affected. The Legislature hereby declares that it would have passed this Act and each Part, section, sentence, clause or phrase thereof irrespective of the fact that any one or more other Parts, sections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 40. Amendment of conflicting laws. All laws and parts of laws heretofore enacted which are in conflict with the provisions of this Act are hereby amended to conform herewith. All acts passed during this General Session of 1965, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act, unless such acts specifically provide that this Act is being amended.

SECTION 41. Subject to the foregoing, this Act shall take effect upon its approval.

(Approved June 21, 1965.) **S.B. 656.**