

**ACT 33**

H. B. 474.

A Bill for an Act Relating to Taxation and Amending Chapter 121, Revised Laws of Hawaii 1955, as Amended.

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

SECTION 1. Chapter 121, Revised Laws of Hawaii 1955, as amended, is hereby amended by adding thereto new sections to be appropriately designated and to read as follows:

“**Sec. 121-..... Definitions.** As used in this Act, unless the context otherwise requires:

“(a) ‘Business income’ means income arising from transactions and

activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

"(b) 'Commercial domicile' means the principal place from which the trade or business of the taxpayer is directed or managed.

"(c) 'Compensation' means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

"(d) 'Nonbusiness income' means all income other than business income.

"(e) 'Public utility' has the meaning given that term in section 104-1.

"(f) 'Sales' means all gross receipts of the taxpayer not allocated under those five sections of this Act, whose section headings read **Specified non-business income, Rents—royalties, Allocation of capital gains and losses, Allocation of interest and dividends, and Allocation of patent and copyright royalties**, being Sections 121-..., 121-..., 121-..., 121-..., and 121-..., respectively, of this Act.

"(g) 'State' means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

"**Sec. 121-..... Taxpayers affected.** Any taxpayer having income from business activity which is taxable both within and without this State, other than activity as a public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Act.

"**Sec. 121-..... Taxable in another state.** For purposes of allocation and apportionment of income under this Act, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

"**Sec. 121-..... Specified nonbusiness income.** Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in the next succeeding three sections of this Act, to wit, section 121-...; 121-...; and 121-....

"**Sec. 121-..... Rents—royalties.** (a) Net rents and royalties from real property located in this State are allocable to this State.

"(b) Net rents and royalties from tangible personal property are allocable to this State:

"(1) if and to the extent that the property is utilized in this State, or

"(2) in their entirety if the taxpayer's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

"(c) The extent of utilization of tangible personal property in a state is

determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

**“Sec. 121-..... Allocation of capital gains and losses.** (a) Capital gains and losses from sales of real property located in this State are allocable to this State.

“(b) Capital gains and losses from sales of tangible personal property are allocable to this State if

“(1) the property had a situs in this State at the time of the sale or

“(2) the taxpayer’s commercial domicile is in this State and the taxpayer is not taxable in the state in which the property has a situs.

“(c) Capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer’s commercial domicile is in this State.

**“Sec. 121-..... Allocation of interest and dividends.** Interest and dividends are allocable to this State if the taxpayer’s commercial domicile is in this State.

**“Sec. 121-..... Allocation of patent and copyright royalties.** (a) Patent and copyright royalties are allocable to this State:

“(1) if and to the extent that the patent or copyright is utilized by the payer in this State, or

“(2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer’s commercial domicile is in this State.

“(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer’s commercial domicile is located.

“(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer’s commercial domicile is located.

**“Sec. 121-..... Apportionment of business income—percentage.** All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

**“Sec. 121-..... Apportionment—property factor.** The property

factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

**“Sec. 121-..... Apportionment—property factor—owned and used property.** Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

**“Sec. 121-..... Apportionment—property factor—average value.** The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the director of taxation may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

**“Sec. 121-..... Apportionment—payroll factor.** The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

**“Sec. 121-..... Compensation—where paid.** Compensation is paid in this State if:

“(a) the individual's service is performed entirely within the State; or

“(b) the individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or

“(c) some of the service is performed in the State and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the State, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

**“Sec. 121-..... Apportionment—sales factor.** The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

**“Sec. 121-..... Apportionment—sales factor—tangible personalty.** Sales of tangible personal property are in this State if:

“(a) the property is delivered or shipped to a purchaser, other than the United States government, within this State regardless of the f.o.b. point or other conditions of the sale; or

“(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this State and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

**“Sec. 121-..... Apportionment—sales factor—non-tangible per-**

**sonalty.** Sales, other than sales of tangible personal property, are in this State if:

- “(a) the income-producing activity is performed in this State; or
- “(b) the income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other state, based on costs of performance.

“**Sec. 121-..... Equitable adjustment of formula.** If the allocation and apportionment provisions of this Act do not fairly represent the extent of the taxpayer’s business activity in this State, the taxpayer may petition for or the director of taxation may require, in respect to all or any part of the taxpayer’s business activity, if reasonable:

- “(a) separate accounting;
- “(b) the exclusion of any one or more of the factors;
- “(c) the inclusion of one or more additional factors which will fairly represent the taxpayer’s business activity in this State; or
- “(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer’s income.

“**Sec. 121-..... Purpose of act.** This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

“**Sec. 121-..... Citation of act.** This Act may be cited as the Uniform Division of Income for Tax Purposes Act.”

**SECTION 2.** 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.

**SECTION 3.** Severability. If any part, section, sentence, clause, or phrase of this Act, or its application to any persons or circumstances is for any reason held to be unconstitutional or invalid, the remaining portions 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 4.** Effective date. This Act, upon its approval, shall apply with respect to taxable years beginning on or after January 1, 1968.

(Approved April 28, 1967.)