

## ACT 7

S. B. 45.

A Bill for an Act Relating To Taxation and Amending Chapters 117 and 127, Revised Laws of Hawaii 1955, as Amended.

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

SECTION 1. This Act is hereby declared to be an urgency measure deemed necessary in the public interest within the meaning of section 11 of Article III of the Constitution of the State of Hawaii.

The following is a statement of facts constituting such urgency:

Under the present general excise tax law set forth in chapter 117, R.L.H. 1955, as amended, the department of taxation has interpreted such law to mean that sales of tangible personal property made to national banks are exempt transactions under that law. Also, under present interpretation of the use tax law set forth in chapter 119, R.L.H. 1955, as amended, national banks are deemed exempt from the application of that tax law. On the other hand, sales made to state-chartered banks are not exempt from the application of the general excise tax law nor are such banks exempted from the application of the use tax law. The resulting tax advantages now enjoyed by national banks over state-chartered banks are deemed not justifiable under present terms and conditions and are not conducive to a uniform application of the aforesaid tax laws. Furthermore, it is inequitable that state-chartered banks bear a greater tax burden than national banks since both enjoy the same benefits and privileges from state and local services and both are afforded the same protection of Hawaii laws.

The holding that national banks are exempt from the application of Hawaii's use tax law results from an interpretation of the use tax law and the Congressional Act that authorized the establishment of such banks—"The National Bank Act." Furthermore, section 127-2 of the R.L.H. 1955, as amended, imposes a franchise tax on national banks in lieu of other taxes imposed by the State or any political subdivision of the State. A most recent court decision in this area of state taxation of national banks is a decision by

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the supreme court of one of the states holding that the State's sales and use tax may be imposed upon national banks notwithstanding the language contained in the National Bank Act. The matter is now before the Supreme Court of the United States. In view of this recent decision, section 127-2 should be amended so as to permit the application of other Hawaii taxes on national banks, to the extent permissible, in the same manner and to the same extent as are applicable to state-chartered banks. Accordingly, this Act is deemed an urgency measure necessary in the public interest.

SECTION 2. Subsection 117-21.5(a)(3), R.L.H. 1955, as amended, is hereby further amended to read as follows:

“(3) Other tangible personal property hereafter sold by any person licensed under chapter 117 to the United States (including any agency or instrumentality thereof), but the person making such sale shall nevertheless, within the meaning of chapter 117, be deemed a licensed seller.”

SECTION 3. Subsection 127-2(b), R.L.H. 1955, as amended, is hereby further amended to read as follows:

“(b) Nothing in this chapter shall be construed (1) to exclude the application of other taxes imposed by the State or any political division thereof on national banking associations, their activities, property, income, shares or dividends when such taxes may be imposed in addition to those authorized by the above cited section 5219 of the Revised Statutes, or other similar law, or (2) to exempt the real property of national banking associations from taxation to the same extent, according to its value, as other real property is taxed, or (3) to preclude the inclusion of the dividends from national banking associations in the income of individuals taxable under chapter 121 to the same extent as are included dividends from domestic corporations.”

SECTION 4. This Act, upon its approval, shall be effective for those tax years beginning on and after January 1, 1969.

(Approved April 23, 1968.)