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S. B. NO. 105

A Bill for an Act Providing for the Taxation of National Banks.

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

SECTION 1. Section 237-6, Hawaii Revised Statutes, is amended to read:

“§237-6 ‘Contractor’, ‘federal cost-plus contractor’, defined. ‘Contractor’ includes, for purposes of this chapter:

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- (1) Every person engaging in the business of contracting to erect, construct, repair, or improve buildings or structures, of any kind or description therein, including any portion thereof, or to make any installation therein, or to make, construct, repair, or improve any highway, road, street, sidewalk, ditch, excavation, fill, bridge, shaft, well, culvert, sewer, water system, drainage system, dredging or harbor improvement project, electric or steam rail, lighting or power system, transmission line, tower, dock, wharf, or other improvements; and
- (2) Every person engaging in the business of architecture and engineering, as defined in section 464-1.

‘Federal cost-plus contractor’ means a contractor having a contract with the United States or an instrumentality thereof, excluding national banks, where, by the terms of the contract, the United States or such instrumentality, excluding national banks, agrees to reimburse the contractor for the cost of material, plant, or equipment used in the performance of the contract and for taxes which the contractor may be required to pay with respect to such material, plant, or equipment, whether the contractor’s profit is computed in the form of a fixed fee or on a percentage basis; and also means a subcontractor under such a contract, who also operates on a cost-plus basis.”

SECTION 2. Section 237-16(a), Hawaii Revised Statutes, is amended to read:

“(a) This section relates to certain retailing in the State as follows:

- (1) This section relates to the sale of tangible personal property, for consumption or use by the purchaser and not for resale, the renting of tangible personal property, and the rendering of services by one engaged in a service business or calling, as defined, to a person who is not purchasing the services for resale, but does not relate to the sale or rental of tangible personal property or the rendering of services to the State, its political subdivisions or agencies or instrumentalities of the State or a political subdivision, or to the United States or its agencies or instrumentalities (other than national banks), or to a corporation, organization, or other person designated in section 237-23 who is not subject to the tax imposed by this chapter, or to a person licensed under this chapter in connection with his business.
- (2) This section relates to the business of a contractor, as defined, but does not relate to contracting with, or any gross income or proceeds of a subcontractor if the principal contract is with, the State, its political subdivisions, or agencies or instrumentalities of the State or a political subdivision, or with the United States or its agencies or instrumentalities (other than national banks), or with a person designated in section 237-23 who is not subject to the tax imposed by this chapter, or with a person licensed under this chapter in connection with his business.
- (3) This section relates to furnishing of transient accommodations in a hotel, apartment hotel, or other place in which lodgings are regularly furnished to transients for a consideration which includes the rendering of services.”

SECTION 3. Section 237-23(a), Hawaii Revised Statutes, is amended to read:

- (a) This chapter shall not apply to the following persons:
- (1) Banks taxable under chapter 241;
 - (2) Public service companies (as that term is defined in section 239-2), with respect to the gross income, either actual gross income or gross income estimated and adjusted, which is included in the measure of the tax imposed by chapter 239;
 - (3) Public utilities owned and operated by the State or any county or other political subdivision thereof;
 - (4) Insurance companies which pay the State a tax upon their gross premiums under chapter 431;
 - (5) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, or other benefits to the members of such societies, orders, or associations, and to their dependents;
 - (6) Corporations, associations, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended by the Housing Act of 1961, the Senior Citizens Housing Act of 1962, the Housing Act of 1964, and the Housing and Urban Development Act of 1965;
 - (7) Business leagues, chambers of commerce, boards of trade, civic leagues, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare, and from which no profit inures to the benefit of any private stockholder or individual;
 - (8) Hospitals, infirmaries, and sanitarium;
 - (9) Cooperative associations now or hereafter incorporated under and pursuant to chapters 421 or 422 and which fully meet the requirements of section 421-23 or section 422-33 (provided that the exemption shall apply only to the gross income derived from its activities authorized by chapters 421 or 422; and that the exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all such persons shall be so taxable);
 - (10) Building and loan associations taxable under chapter 241;
 - (11) Persons affected with leprosy and kokuas, with respect to business within the county of Kalawao;
 - (12) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or

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individual (provided, that the exemption shall apply only to the activities of such persons in the conduct of cemeteries and not to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of such persons);

- (13) Industrial loan companies taxable under chapter 241, provided that the exemption shall apply only to the income from the 'engaging in the business of an industrial loan company' as defined in section 408-2;
- (14) Businesses which are organized for the purpose of broadcasting radio programs to areas outside of the State to promote the Hawaiian tourist industry and which are solely supported by State funds;
- (15) Local development companies incorporated under the laws of the State and approved by the Small Business Administration as qualifying for loans under section 502 of the Small Business Investment Act of 1958, as amended, provided that the exemption shall apply only with respect to gross income derived as interest on loans made to borrowers from loan funds obtained from the Small Business Administration but only if the loans are made at the same rates of interest payable to the Small Business Administration by the local development corporation;
- (16) Non-profit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations."

SECTION 4. Section 237-25(a), Hawaii Revised Statutes, is amended to read:

“(a) Any provision of law to the contrary notwithstanding, there shall be exempted from, and excluded from the measures of, the taxes imposed by chapters 237, 244, and 245 all sales, and the gross proceeds of all sales, of:

- (1) Intoxicating liquor, as defined in chapter 445, hereafter sold by any person licensed under chapter 445 to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or chapter 244 but not including national banks), or to any organization to which such sale is permitted by the proviso of 'Class 3' of section 281-31, located on any army, navy, or air force reservation, but the person making the sale shall nevertheless, within the meaning of chapters 237, 244, and 281 be deemed to be a licensed seller.
- (2) Tobacco products, as defined in chapter 245, sold by any person licensed under the chapter to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or chapter 245 but not including national banks), but the person making the sale shall nevertheless, within the meaning of chapters 237 and 245, be deemed to be a licensed seller.
- (3) Other tangible personal property hereafter sold by any person licensed under this chapter to the United States (including any agency or instrumentality thereof but not including national banks),

but the person making such sale shall nevertheless, within the meaning of this chapter, be deemed a licensed seller.

- (4) When the amount of property sold by a licensee turns upon the amount of the property sold through a vending machine or similar device to the customer using the device, there shall not be deemed to have occurred any sale covered by an exemption under paragraphs (1), (2) or (3) of this subsection.”

SECTION 5. Section 237-26(a), Hawaii Revised Statutes, is amended to read:

“(a) Any provision of law to the contrary notwithstanding, there shall be exempted from the measure of the taxes imposed by chapter 237, all of the gross proceeds derived by a contractor or subcontractor arising from the performance of any scientific work as defined in subsection (b), under a contract or subcontract entered into with the United States (including any agency or instrumentality thereof but not including national banks), and all of the gross proceeds derived from the sale of tangible personal property by a seller of such tangible personal property to such contractor or subcontractor; provided, however, the exemption herein shall apply only to those tangible personal property which is to be affixed to, or to become a physical, integral part of the scientific facility, or which is to be entirely consumed during the performance of the service required by the contract or subcontract.”

SECTION 6. Section 238-1, Hawaii Revised Statutes, is amended to read:

§238-1 Definitions, generally. Whenever used in this chapter, unless otherwise required by the context:

‘General excise tax law’ means chapter 237, as amended from time to time.

‘Person’, ‘business’, ‘engaging in business’, ‘retailer’, ‘wholesaler’, ‘jobber’, and ‘contractor’ have the meanings defined by chapter 237.

‘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 per-

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son immune from the tax imposed by this chapter under the Constitution and laws of the United States but the terms shall include national banks.

'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 other than national banks, the State 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 237, 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 237.

'Use' (and any nounal, verbal, adjective, adverbial, and other equivalent form of said term), herein used interchangeably, means any use, whether the use is of such nature as to cause the property to be appreciably consumed or not, or the keeping of the 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 the 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: (A) in the case of a contractor importing permanent equipment for the performance of a construction contract, with intent to remove, and who does remove, the equipment out of the State upon completing the contract; (B) 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; (C) 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 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 the vessels.
- (5) The use or keeping for use of household goods, personal effects, and private automobiles imported into the State for non-business use by a person who (A) acquired them in another state, territory, district,

or country, (B) at the time of the acquisition was a bona fide resident of another state, territory, district, or country, (C) acquired the property for use outside the State, and (D) 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.

- (6) The leasing or renting of any aircraft or the keeping of any aircraft solely for leasing or renting to lessees or renters using the aircraft as a public utility as defined in chapter 269.

With regard to purchases made and distributed under the authority of chapter 421 or under the authority of the Fish Marketing Act under chapter 422, 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:

- (1) A seller’s being present in the State, and
- (2) A seller’s having in the State a salesman, commission agent, manufacturer’s representative, broker, or other person who is authorized or employed by the seller to assist the seller in selling property for use or consumption in the State, by procuring orders for the sales, making collections or deliveries or otherwise, and
- (3) A seller’s having in the State a person upon whom process directed to the 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 416-131.”

SECTION 7. For the period up to and including January 1, 1972, purchases, sales or use of tangible personal property by national banks by written contracts entered into by them prior to September 1, 1969 shall not be subject to the general excise or use tax.

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.*

SECTION 9. This Act shall take effect upon its approval.

(Approved March 18, 1971.)

* Edited accordingly