

**First Special Session  
1984**

**ACT 1**

**H.B. NO. 1-84**

A Bill for an Act Relating to Taxation.

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

SECTION 1. Purpose. The purpose of this bill is to reenact the Hawaii liquor tax law to remove any doubt as to whether or not the United States Supreme Court has invalidated in its entirety HRS chapter 244 in the decision rendered in the appeal of Bacchus Imports, Ltd., et al. v. Dias, \_\_\_\_\_ U.S. \_\_\_\_\_, Sup. Ct. No. 82-1565, decided June 29, 1984. It is the declared intention of the Hawaii State Legislature to continue in force all of the provisions of chapter 244, the Hawaii Liquor Tax Law, as though the law was enacted without the exemptions accorded to okolehao, fruit wine and rum manufactured in the State. All of the remaining provisions of the Hawaii Revised Statutes which refer to, or may be affected by, chapter 244 shall remain in force and become a part of the administration of this Act.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read:

**“CHAPTER  
LIQUOR TAX LAW**

- Sec.-1 DEFINITIONS
- 2 PERMIT
- 3 COOPERATION BETWEEN DEPARTMENT AND LIQUOR COMMISSION
- 4 TAX; LIMITATIONS
- 5 STATEMENT OF TAX AS SEPARATE PART OF PRICE
- 6 RETURN, FORM, CONTENTS
- 7 PAYMENT OF TAX; PENALTIES
- 8 DETERMINATION OF TAX, ADDITIONAL ASSESSMENTS, CREDITS AND REFUNDS
- 9 RECORDS TO BE KEPT
- 10 INSPECTION
- 11 TAX IN ADDITION TO OTHER TAXES
- 12 APPEALS
- 13 OTHER PROVISIONS APPLICABLE
- 14 INVESTIGATIONS; CONTEMPTS; FEES
- 15 ADMINISTRATION BY DIRECTOR; RULES AND REGULATIONS

-16 PENALTIES

-17 DISPOSITION OF REVENUES

§ -1 **Definitions.** Wherever used in this chapter, unless the context otherwise requires:

“Liquor commission” means the liquor commission of each county.

“Liquor law” means chapter 281.

“Liquor” and “licensed premises” shall have the same meanings as such words have as used in the liquor law.

“Dealer” means the holder of a manufacturer’s license, or a wholesaler’s license, under the liquor law.

“Permittee” means the holder of a permit provided for in section -2.

“Person” means an individual, partnership, society, unincorporated association, joint adventure, group, hui, joint stock company, corporation, trustee, or other fiduciary, or other entity.

“Wholesale price” means the total amount for which liquor is sold by a dealer, valued in money, whether or not paid, and without any deduction for cash discounts, but the amount of tax imposed by this chapter, whether or not separately charged and collected, shall be deducted in determining the wholesale price. In the case of a sale not made at wholesale, or not made by a dealer, or if the tax is upon the use, the wholesale price shall be deemed to be the average price of sales to retail dealers of like liquor, made by the taxpayer during the month preceding the accrual of the tax, or if no such sales were made during the month by the taxpayer, the average price of sales to retail dealers of like liquor made by permittees in the same county during the month preceding the accrual of the tax.

“Sale” means any transfer of title or possession, or both, exchange or barter, in any manner or by any means whatsoever, for a consideration.

“Use” 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.

§ -2 **Permit.** (a) It shall be unlawful for any dealer to sell liquor unless a permit has been issued to him as hereinafter prescribed, and such permit is in full force and effect.

(b) The liquor commission shall certify to the department of taxation from time to time and within forty-eight hours after such license is issued the name of every dealer, together with his place of business and the period covered by his license. The department thereupon shall issue its permit to such person for the period covered by his license upon the payment of a permit fee of \$2.50. The permit shall be issued by the department as of the date when the liquor commission issued the license.

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(c) Any permit issued under this chapter shall not be assignable; it shall be conspicuously displayed on the licensed premises of the permittee; it shall expire on June 30 next succeeding the date upon which it is issued, unless sooner suspended, surrendered, or revoked for cause by the department; and it shall be renewed annually before July 1, upon fulfillment of all requirements as in the case of an original permit and the payment of a renewal fee of \$2.50. Whenever a permit is defaced, destroyed, or lost, or the licensed premises are relocated, the department may issue a duplicate permit to the permittee upon the payment of a fee of 50 cents.

(d) The department may suspend, or, after hearing, revoke, any permit issued under this chapter whenever it finds that the permittee has failed to comply with this chapter, or any rule or regulation of the department prescribed, adopted, and promulgated under this chapter. Upon suspending or revoking any permit the department shall request the permittee to surrender to it immediately the permit, or any duplicate thereof issued to him, and the permittee shall surrender the same promptly to the department as requested. Whenever the department suspends a permit, it shall notify the permittee immediately and afford him a hearing, if desired, and if a hearing has not already been afforded. After the hearing the department shall either rescind its order of suspension, or good cause appearing therefor, shall continue the suspension or revoke the permit.

**§ -3 Cooperation between department and liquor commission.** The department of taxation shall notify the proper liquor commission of the name and address of every permittee whose permit has been revoked, and any license issued to the permittee under the liquor law thereupon shall be deemed forfeited.

The department may notify the proper liquor commission of the name and address of every person who has failed to file any return required, or to pay any tax prescribed, or to secure a permit, or to perform any other duty or act imposed under this chapter, and such liquor commission shall thereupon suspend any license which may have been issued to any such person under the liquor law until such time as such person complies with this chapter.

The liquor commission shall, upon request, furnish to the department any information in its possession relative to any person having a license issued by it, and its records shall be open to the examination of the department.

**§ -4 Tax; limitations.** Every person who sells or uses any liquor not taxable under this chapter in respect of the transaction by which such person or his vendor acquired such liquor, shall pay an excise tax which is hereby imposed, equal to twenty per cent of the wholesale price of the liquor so sold or used; provided that the tax shall be paid only once upon the same liquor; provided further that the tax shall not apply to:

- (1) Liquor held for sale by a permittee but not yet sold;
- (2) Liquor sold by one permittee to another permittee;

- (3) Liquor which is neither delivered in the State nor to be used in the State, or which under the Constitution and laws of the United States cannot be legally subjected to the tax imposed by this chapter so long as and to the extent to which the State is without power to impose the tax;
- (4) Liquor sold for sacramental purposes or the use of liquor for sacramental purposes, or any liquor imported pursuant to section 281-33;
- (5) Alcohol sold pursuant to section 281-37 to a person holding a purchase permit or prescription therefor, or any sale or use of alcohol, so purchased, for other than beverage purposes.

§ -5 **Statement of tax separate part of price.** A dealer may state the amount of the tax accruing on a sale as a separate part of the price charged by him, but shall not be required to do so; however, section 281-83 shall not apply unless the amount of the tax has been so separately stated.

§ -6 **Return, form, contents.** Every taxpayer shall, on or before the last day of each month, file with the department of taxation in the taxation district in which his business premises are located, or with the department in Honolulu, a return showing all sales of liquor made by him during the preceding month, showing separately the amount of the nontaxable sales, and the amount of the taxable sales, and the tax payable thereon. The return shall also show the amount of liquor used during the preceding month which is subject to tax, and the tax payable thereon. The form of return shall be prescribed by the department and shall contain such information as it may deem necessary for the proper administration of this chapter.

§ -7 **Payment of tax; penalties.** At the time of the filing of the return required under section -6 and within the time prescribed therefor, each taxpayer shall pay to the department of taxation the tax imposed by this chapter, required to be shown by the return.

Penalties and interest shall be added to and become a part of the tax, when and as provided by section 231-39.

§ -8 **Determination of tax, additional assessments, credit, and refunds.**  
 (a) As soon as practicable after each return has been filed, the department of taxation shall cause it to be examined and shall compute and determine the amount of the tax payable thereon.

(b) If it should appear upon such examination or thereafter within five years after the filing of the return, or at any time if no return has been filed, as a result of such examination or as a result of any examination of the records of the taxpayer or of any other inquiry or investigation, that the correct amount of the tax is greater than that shown on the return, or that any tax imposed by the chapter has not been paid, an assessment of such tax may be made in the manner provided in section 235-108(b). The amount of the tax for the period covered by

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the assessment shall not be reduced below the amount determined by an assessment so made, except upon appeal or in a proceeding brought pursuant to section 40-35.

(c) If the taxpayer has paid or returned with respect to any month more than the amount determined to be the correct amount of tax for such month, the amount of the tax so returned and any assessment of tax made pursuant to the return may be reduced, and any overpayment of tax may be credited upon the tax imposed by this chapter, or at the election of the taxpayer, he not being delinquent in the payment of any taxes owing to the State, may be refunded in the manner provided in section 231-23(d); provided, that no reduction of tax may be made when forbidden by subsection (b) or more than five years after the filing of the return.

**§ -9 Records to be kept.** (a) Every dealer shall keep a record of all sales of liquor made by him, in such form as the department of taxation may prescribe. Every person holding a license under the liquor law, other than a manufacturer's or wholesaler's license, shall keep a record of all purchases by him of liquor, in such form as the department may prescribe. All such records shall be offered for inspection and examination at any time upon demand by the department and shall be preserved for a period of five years, except that the department may in writing consent to their destruction within such period or may require that they be kept longer.

The department may by regulation require the dealer to keep such other records as it may deem necessary for the proper enforcement of this chapter.

(b) If any dealer or any other taxpayer fails to keep records from which a proper determination of the tax due under this chapter may be made, the department may fix the amount of tax for any period from the best information obtainable by it, and assess the tax as hereinbefore provided.

**§ -10 Inspection.** The director of taxation, or his duly authorized agent, may examine all records required to be kept under this chapter, and books, papers, and records of any person engaged in the sale of liquor to verify the accuracy of the payment of the tax imposed by this chapter and other compliance with this chapter and regulations adopted pursuant thereto. Every person in possession of such books, papers and records and his agents and employees shall give the director or his duly authorized agent the means, facilities, and opportunities for such examination.

**§ -11 Tax in addition to other taxes.** The tax imposed by this chapter shall be in addition to any other tax imposed upon the business of selling liquor or upon any of the transactions, acts, or activities taxed by this chapter.

**§ -12 Appeals.** Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114, provided the tax so assessed shall have been paid.

The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232.

§ -13 **Other provisions applicable.** All of the provisions of chapters 235 and 237 not inconsistent with this chapter and which may appropriately be applied to the taxes, persons, circumstances, and situations involved in this chapter, including (without prejudice to the generality of the foregoing) provisions as to penalties and interest, and provisions granting administrative powers to the director of taxation, and provisions for the assessment, levy, and collection of taxes, shall be applicable to the taxes imposed by this chapter, and to the assessment, levy, and collection thereof.

§ -14 **Investigations; contempts; fees.** The director of taxation, and any agent authorized by him to conduct any inquiry, investigation, or hearing hereunder, shall have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the director, the director or his agent authorized to conduct the hearing may subpoena witnesses and require the production of books, papers, and documents pertinent to the inquiry. No witness under subpoena authorized to be issued by this section shall be excused from testifying or from producing books or papers on the ground that such testimony or the production of such books or other documentary evidence would tend to incriminate him, but such evidence or the books or papers so produced shall not be used in any criminal proceeding against him.

Contempts. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to him by the director or his authorized agent or to produce any books and papers pursuant thereto, the director or the agent may apply to the circuit court of the circuit wherein the taxpayer resides or wherein the transaction, act, or activity under investigation has occurred, or to any judge of the court, setting forth such disobedience to process or refusal to answer, and the court or the judge shall cite the person to appear before the court or the judge to answer such question or to produce such books and papers, and, upon his refusal so to do, shall commit the person to jail until he shall testify, but not for a longer period than sixty days. Notwithstanding the serving of the term of such commitment by any person, the director may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify.

Fees. Officers who serve subpoenas issued by the director or under his authority and witnesses attending hearings conducted by him hereunder shall receive like fees and compensation as officers and witnesses in the circuit courts of the State, to be paid on vouchers of the director, from any moneys available for litigation expenses of the department of taxation.

§ -15 **Administration by director; rules and regulations.** The administration of this chapter is vested in the director of taxation who may prescribe and

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enforce rules and regulations for the enforcement and administration of this chapter.

The rules and regulations shall be prescribed by the director, subject to chapter 91.

§ -16 **Penalties.** (a) The penalties provided by this section shall apply to any person whether acting as principal, agent, officer, or director, for himself, itself, or for another person, and shall apply to each single violation, but shall not apply to any act the punishment for which is elsewhere prescribed by this chapter.

(b) Any dealer who sells liquor without a permit as required by this chapter shall be fined not more than \$1,000.

(c) Any person who makes any false or fraudulent or false statement in any return, with intent to defraud the State or to evade the payment of any tax or any part thereof imposed by this chapter, or who in any manner intentionally deceives or attempts to deceive the director of taxation or his authorized agent in relation to any such tax shall be punished as provided in section 231-34.

(d) Any person who fails or refuses to permit the examination of any book, paper, account, record, or property by the director or his authorized agent, as required by this chapter, and any person who fails, neglects, or refuses to comply with or violates the rules and regulations prescribed, adopted, and promulgated by the director under this chapter, shall be fined not more than \$500, or imprisoned not more than six months, or both.

§ -17 **Disposition of revenues.** All moneys collected pursuant to this chapter shall be paid into the state treasury as state realizations, to be kept and accounted for as provided by law.

SECTION 3. Section 281-83, Hawaii Revised Statutes, is amended to read:

“§281-83 **Payment of liquor tax to be made.** Whenever liquor is purchased by the holder of a retail, dispenser, club, cabaret, hotel, or vessel license from the holder of a manufacturer’s or wholesale license, the amount added to the price on account of the tax imposed by chapter [244] \_\_\_\_\_, as provided by section [244-5] \_\_\_\_\_-5, shall be paid by the purchaser within twenty days after the end of the month in which the purchase has been made. On the failure to make the payment within such time the liquor commission may in its discretion suspend the license of the purchaser for a period of not more than ten days for the first failure and not more than twenty days for any subsequent failure.

The holder of a manufacturer’s or wholesale license shall report the failure of a purchaser to comply with this section to the commission of the county in which the purchaser holds a license, in order that the suspensions provided by this section may be enforced by the commission. Any holder of a

manufacturer's or wholesale license who fails to make such report may likewise be subject to the suspensions hereinabove provided."

SECTION 4. Section 231-1, Hawaii Revised Statutes, is amended to read:

"§231-1. **Definitions.** Whenever used in chapters 231 to 249 [and], 236D[:] and \_\_\_\_\_:<sup>1</sup>

"Assessor" or "assistant assessor" means the assessor or an assistant assessor appointed for the taxation district concerned. Whenever there is more than one assessor for the first district, with respect to that district "assessor" or "assistant assessor" means the assessor or assistant assessor for a particular tax.

"Comptroller" means the comptroller of the State.

"Department" means the department of taxation, unless the context clearly indicates otherwise.

"Property" or "real property" has the meaning defined by section 246-1, and, to the extent required by provisions making applicable to other chapters, this chapter, or chapters 232, 233, 235 to 239, 241 to 246, [and] 236D, and \_\_\_\_\_, also means and includes other subjects or measures of tax."

SECTION 5. Chapter 244, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 14, 1984.)

**Note**

1. Underscoring missing.