

ACT 73

S.B. NO. 1577-84

A Bill for an Act Relating to Taxation.

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

SECTION 1. Act 253, Session Laws of Hawaii 1982, amended section 237-4, Hawaii Revised Statutes, to provide relief to agricultural producers.

Traditionally manufacturers pay an excise tax rate of .5 per cent on the raw materials utilized in their business. Farmers (producers), however, did not enjoy such tax relief, and had to pay the full four per cent excise tax rate for much of their raw materials. Act 253 was designed to extend the .5 per cent excise tax rate to cover all raw materials utilized by farmers.

The department of taxation has pointed out a technical problem with Act 253. The Act extended the .5 per cent excise tax rate to agricultural or aquacultural producers. There would have been no problem if agricultural was defined as in chapter 421, Hawaii Revised Statutes. Chapter 237, however, refers to "agricultural, animal, [and] poultry" producers. The department of taxation has ruled that Act 253 only applies to agricultural producers which do not include animal and poultry companies.

This technical problem was not the intent of Act 253, and the purpose of this Act is to further amend section 237-4 as well as section 237-5, Hawaii Revised Statutes, to correct this error. In addition the intent of this Act is to impose the use tax on importations by producers and cooperative associations at a similar .5 per cent.

SECTION 2. Section 237-4, Hawaii Revised Statutes, is amended to read as follows:

“§237-4 “Wholesaler”, “jobber”, defined. “Wholesaler” or “jobber” applies only to a person making sales at wholesale. Only the following are sales at wholesale:

- (1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;
- (2) Sales to a licensed manufacturer of material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and which will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;
- (3) Sales to a licensed [agricultural or aquacultural] producer or [agricultural or aquacultural] cooperative association of materials or commodities which are to be incorporated by the producer or by the cooperative association into a finished or saleable product which is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of [agricultural or aquacultural] commodities which are sold by the producer or by the cooperative association;
- (4) Sales to a licensed contractor, of material or commodities which are to be incorporated by the 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;
- (5) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(9) for sale to such producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer’s own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by [him] the feed lot operator as part to be butchered or to a cooperative association described in section 237-23(a)(9) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than

the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;

- (6) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(9) for sale to the producer, of seed for producing agricultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);
- (7) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(9) for sale to such producer; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural products; of seedlings and cuttings for producing nursery plants; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);
- (8) Sales of tangible personal property to a licensed person engaged in the service business; provided that (A) the property is not consumed or incidental to the performance of the services; (B) there is a resale of the article at the retail rate of four per cent; and (C) the resale of the article is separately charged or billed by the person rendering the services;
- (9) Sales to a licensed leasing company of capital goods which are thereafter leased as a service to others. Capital goods means goods which have a depreciable life and which are purchased by the leasing company for lease to its customers.

If the use tax law is finally held by a court of competent jurisdiction to be unconstitutional or invalid insofar as it purports to tax the use or consumption of tangible personal property imported into the State in interstate or foreign commerce or both, wholesalers and jobbers shall be taxed thereafter under this chapter in accordance with the following definition (which shall supersede the preceding paragraph otherwise defining "wholesaler" or "jobber"): "Wholesaler" or "jobber" means a person, or a definitely organized division thereof, definitely organized to render and rendering a general distribution service which buys and maintains at [his or its] the person's place of business a stock or lines of merchandise which [he or it] the person distributes; and which, through salesmen, advertising, or sales promotion devices, sells to licensed retailers, to

institutional or licensed commercial or industrial users, in wholesale quantities and at wholesale rates. A corporation deemed not to be carrying on a trade or business in this State under section 235-6 shall nevertheless be deemed to be a wholesaler and shall be subject to the tax imposed by this chapter.”

SECTION 3. Section 237-5, Hawaii Revised Statutes, is amended to read as follows:

“§237-5 “Producer” defined. “Producer” means any person engaged in the business of raising and producing agricultural[, animal, or poultry] products in their natural state, or in producing natural resource products, or engaged in the business of fishing or aquaculture, for sale, or for shipment or transportation out of the State, of the agricultural[,] or aquaculture[, animal, or poultry] products in their natural or processed state, or butchered and dressed, or the natural resource products, or fish.

As used in this section “agricultural products” include floricultural, horticultural, viticultural, forestry, nut, coffee, dairy, livestock, poultry, bee, animal, and any other farm, agronomic, or plantation products.”

SECTION 4. Section 238-4, Hawaii Revised Statutes, is amended to read as follows:

“§238-4 Certain property used by producers. If[:

- (1) A] a licensed producer, or a cooperative association acting under the authority of chapter 421 or 422, in order to sell to such producer, or a licensed person [operating a feed lot], imports into the State or acquires in the State[, cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural products; seedlings and cuttings for producing nursery plants; chick containers; or poultry or animal feed, hatching eggs, semen, or replacement stock, in such a manner and for such purposes that if the cartons and the other containers, wrappers, and sacks, binders, seedlings, cuttings, chick containers, poultry, animal feed, hatching eggs, semen, or replacement stock so imported or acquired had been purchased in the State, section 237-4(4) or (6) would apply, or
- (2) A licensed producer, or a cooperative association under the authority of chapter 421 or the Fish Marketing Act under chapter 422 in order to sell to the producer, imports into the State, or acquires in the State, seed or bait, in such manner and for such purposes that if the seed or bait so imported or acquired had been purchased in the State,] commodities, materials, items, services, or living things enumerated in section 237-4(3) and (5) to (7), then section 237-4[(5) would] shall apply[, then,

if]. If section 237-4 applies and the producer is engaged in the sale of [his] the producer's products at retail or in any manner other than at wholesale, then the tax upon use of property in the State imposed by section 238-2(2) shall apply the same as in the case of a purchaser who is a licensed retailer. In other such cases no tax shall be imposed under this chapter.”

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 6. This Act, upon its approval, shall take effect July 1, 1984.

(Approved April 27, 1984.)