

ACT 104

H.B. NO. 3090

A Bill for an Act Relating to Cigarette and Tobacco Tax.

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

SECTION 1. Section 245-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "dealer" to read as follows:

““Dealer” means any person coming into the possession of cigarettes or tobacco products, or any person rendering a distribution service who buys and maintains, at the person’s place of business, a stock of cigarettes or tobacco products which have not been acquired from a wholesaler or dealer licensed under this chapter, and who distributes or uses such cigarettes or tobacco products.”

2. By amending the definition of "wholesaler" to read as follows:

““Wholesaler” means a person rendering a distribution service who buys and maintains, at the person’s place of business, a stock of cigarettes or tobacco products that the person uses, possesses, or distributes only to retailers, or other wholesalers, or both.”

SECTION 2. Section 245-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every wholesaler or dealer, in addition to any other taxes provided by law, shall pay for the privilege of conducting business and other activities in the State an:

- (1) Excise tax equal to 3.00 cents for each cigarette sold, used, or possessed by the wholesaler or dealer, after June 30, 1993, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; such excise tax to increase to 3.50 cents per cigarette on the first day of the month one hundred eighty days after a United States congressional act is signed into law which requires military installations to purchase cigarettes in Hawaii in a manner similar to that required of alcoholic beverages under 10 United States Code, section 2488 (nonappropriated fund instrumentalities, purchase of alcoholic beverages); and
- (2) Excise tax equal to forty per cent of the wholesale price of each article or item of tobacco products sold by the wholesaler or dealer, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer.

Where the tax imposed has been paid on cigarettes or tobacco products which thereafter become the subject of a casualty loss deduction allowable under chapter 235, the tax paid shall be refunded or credited to the account of the wholesaler or dealer. In applying the tax, the tax shall be applied against the latest

of the activities of selling, using, or possessing. The tax shall be imposed at the time of the last of the following activities to occur: the sale; the use; or the possession of cigarettes or tobacco products.”

SECTION 3. Section 245-5, Hawaii Revised Statutes, is amended to read as follows:

“**§245-5 Returns.** Every licensee, on or before the last day of each month, shall file with the department of taxation a return showing the cigarettes and tobacco products sold, possessed, or used by the licensee during the preceding calendar month and of the taxes chargeable against the taxpayer in accordance with this chapter. The form of the return shall be prescribed by the department and shall contain such information, including a separate statement of the number and wholesale price of cigarettes, and the wholesale price of tobacco products, sold, possessed, or used, as it may deem necessary for the proper administration of this chapter.”

SECTION 4. Section 245-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every wholesaler and dealer shall keep a record of every sale or use of cigarettes and tobacco products by the wholesaler or dealer, the number and wholesale price of cigarettes, and the wholesale price of tobacco products, sold, possessed, or used, and of the taxes payable thereon, if any, in such form as the department of taxation may prescribe. The 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, in writing, may consent to their destruction within the five-year period or may require that they be kept longer. The department, by rule, may require the licensee to keep such other records as it may deem necessary for the proper enforcement of this chapter.”

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 8, 1994.)