

ACT 103

S.B. NO. 992

A Bill for an Act Relating to Energy.

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

SECTION 1. The legislature finds that current technology allows for a variety of liquid fuels to be used in electric-power generation. Where older electric power generation technology used diesel fuel or fuel oil, newer technologies now allow for the use of multiple types of liquid fuels, some of which were previously used solely for transportation needs.

The legislature also finds that naphtha is the only liquid fuel, when used for electric-power generation, whose taxation is not explicit under section 243-4, Hawaii Revised Statutes.

The purpose of this Act is to clarify the taxation rate for naphtha, which is sold for use in electric power generation.

SECTION 2. Section 243-1, Hawaii Revised Statutes, is amended as follows:
1. By adding a new definition to be appropriately inserted and to read:

““Power-generating facility” means any electricity-generating facility that requires a permit issued under the Federal Clean Air Act (42 U.S.C. 7401-7671q), the Hawaii air pollution control law (chapter 342B), or both.”

2. By amending the definitions of “aviation fuel”, “distributor”, “liquid fuel”, “person”, “retail dealer”, and “use” to read:

““Aviation fuel” means [~~and includes~~] all liquid substances of whatever chemical composition usable for the propulsion of airplanes.

“Distributor” means [~~and includes~~]:

- (1) Every person who refines, manufactures, produces, or compounds liquid fuel in the State[;] and sells or uses the same therein;
- (2) Every person who imports or causes to be imported into the State any liquid fuel and sells it therein, whether in the original packages or containers in which it is imported or otherwise than in such original packages or containers, or who imports any such fuel for the person’s own use in the State;
- (3) Every person who acquires liquid fuel from a person not a licensed distributor and sells or uses it, whether in the original package or container in which it was imported (if imported)[;] or otherwise than in such original package or container; and
- (4) Every person who acquires liquid fuel from a licensed distributor as a wholesaler thereof and sells or uses it.

“Liquid fuel” or “fuel” means [~~and includes~~] all liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power and includes liquefied petroleum gases, all distillates of and condensates from petroleum, natural gas, coal, coal tar, and vegetable ferments, such distillates and condensates being ordinarily designated as a gasoline, naphtha, benzol, benzine, and alcohols so usable but not restricted to such designation. All aviation fuel [~~which~~] that is sold for use in or used for airplanes is deemed to be “liquid fuel” or “fuel” whether or not coming within the definition contained in the foregoing sentence.

“Person”, except where the context or sense otherwise requires, means [~~and includes~~] individuals, firms, associations, corporations, trusts, estates, partnerships, or other entities.

“Retail dealer” means [~~and includes~~] a person who purchases liquid fuel from a licensed distributor[;] and sells the liquid fuel at retail. Only sales of liquid fuel for consumption or used by the purchaser, and not for resale, are sales at retail.

“Use”, either as a noun or verb, and derivative expressions, means [~~and includes~~] distribution or other disposition of fuel, or any other use thereof, whether with or without compensation [~~therefor~~].”

SECTION 3. Section 243-4, Hawaii Revised Statutes, is amended to read as follows:

“**§243-4 License taxes.** (a) Every distributor shall, in addition to any other taxes provided by law, pay a license tax to the department of taxation for each gallon of liquid fuel refined, manufactured, produced, or compounded by the distributor and sold or used by the distributor in the State or imported by the distributor, or acquired by the distributor from persons who are not licensed distributors, and sold or used by the distributor in the State. Any person who sells or uses any liquid fuel, knowing that the distributor from whom it was originally purchased has not paid and is not paying the tax thereon, shall pay such tax as would have applied to such sale or use by the distributor. The rates of tax [~~hereby~~] imposed are as follows:

- (1) For each gallon of diesel oil, 1 cent;
- (2) For each gallon of gasoline or other aviation fuel sold for use in or used for airplanes, 1 cent;
- (3) For each gallon of naphtha sold for use in a power-generating facility, 1 cent;

- [(3)] (4) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1) [~~and~~], (2), and (3), and other than an alternative fuel, sold or used in the city and county of Honolulu, or sold in any county for ultimate use in the city and county of Honolulu, 16 cents state tax, and in addition thereto [such] an amount, to be known as the “city and county of Honolulu fuel tax”, as shall be levied pursuant to section 243-5;
- [(4)] (5) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1) [~~and~~], (2), and (3), and other than an alternative fuel, sold or used in the county of Hawaii, or sold in any county for ultimate use in the county of Hawaii, 16 cents state tax, and in addition thereto [such] an amount, to be known as the “county of Hawaii fuel tax”, as shall be levied pursuant to section 243-5;
- [(5)] (6) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1) [~~and~~], (2), and (3), and other than an alternative fuel, sold or used in the county of Maui, or sold in any county for ultimate use in the county of Maui, 16 cents state tax, and in addition thereto [such] an amount, to be known as the “county of Maui fuel tax”, as shall be levied pursuant to section 243-5; and
- [(6)] (7) For each gallon of liquid fuel, other than fuel mentioned in paragraphs (1) [~~and~~], (2), and (3), and other than an alternative fuel, sold or used in the county of Kauai, or sold in any county for ultimate use in the county of Kauai, 16 cents state tax, and in addition thereto [such] an amount, to be known as the “county of Kauai fuel tax”, as shall be levied pursuant to section 243-5.

If it is shown to the satisfaction of the department, based upon proper records and from [such] any other evidence as the department may require, that liquid fuel, other than fuel mentioned in paragraphs (1) [~~and~~], (2), and (3), is used for agricultural equipment that does not operate upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by this section in excess of 1 cent per gallon. The department shall adopt rules to administer such refunds.

(b) Every distributor of diesel oil, in addition to the tax required by subsection (a), shall pay a license tax to the department for each gallon of [such] diesel oil sold or used by the distributor for operating a motor vehicle or motor vehicles upon public highways of the State. The rates of the additional tax [hereby] imposed are as follows:

- (1) For each gallon of diesel oil sold or used in the city and county of Honolulu, or sold in any other county for ultimate use in the city and county of Honolulu, 15 cents state tax, and in addition thereto [such] an amount, to be known as the “city and county of Honolulu fuel tax”, as shall be levied pursuant to section 243-5;
- (2) For each gallon of diesel oil sold or used in the county of Hawaii, or sold in any other county for ultimate use in the county of Hawaii, 15 cents state tax, and in addition thereto [such] an amount, to be known as the “county of Hawaii fuel tax”, as shall be levied pursuant to section 243-5;
- (3) For each gallon of diesel oil sold or used in the county of Maui, or sold in any other county for ultimate use in the county of Maui, 15 cents state tax, and in addition thereto [such] an amount, to be known as the “county of Maui fuel tax”, as shall be levied pursuant to section 243-5; and
- (4) For each gallon of diesel oil sold or used in the county of Kauai, or sold in any other county for ultimate use in the county of Kauai, 15 cents state tax, and in addition thereto [such] an amount, to be known as the

“county of Kauai fuel tax”, as shall be levied pursuant to section 243-5.

If any user of diesel oil furnishes a certificate, in [sueh] a form [as] that the department shall prescribe, to the distributor[;] or if the distributor who uses diesel oil signs [sueh] the certificate, certifying that the diesel oil is for use in operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the tax as provided in paragraphs (1) to (4) shall not be applicable. [~~In the event~~] If a certificate is not or cannot be furnished and the diesel oil is in fact for use for operating a motor vehicle or motor vehicles in areas other than upon public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by the foregoing paragraphs. The department shall adopt rules to administer the refunding of such taxes.

(c) The tax shall not be collected in respect to any benzol, benzene, toluol, xylol, or alternative fuel sold for use other than for operating internal combustion engines. With respect to these products, other than alternative fuels, the department, by rule, shall provide for the reporting and payment of the tax and for the keeping of records [~~in respect thereto;~~] in such a manner as to collect, for each gallon of [sueh] each product sold for use in internal combustion engines for the generation of power, or so used, the same tax or taxes as apply to each gallon of diesel oil. With respect to alternative fuels, the only tax collected shall be that provided in paragraphs (1), (2), and (3) of this subsection. This subsection shall not apply to aviation fuel sold for use in or used for airplanes.

- (1) Every distributor of any alternative fuel for operation of an internal combustion engine shall pay a license tax to the department of one-quarter of [one] 1 cent for each gallon of [sueh] alternative fuel sold or used by the distributor;
- (2) Every distributor, in addition to the tax required under paragraph (1) of this subsection, shall pay a license tax to the department for each gallon of alternative fuel sold or used by the distributor for operating a motor vehicle or motor vehicles upon the public highways of the State at a rate proportional to that of the rates applicable to diesel oil in subsection (b), rounded to the nearest one-tenth of a cent, as follows:
 - (A) Ethanol, 0.145 times the rate for diesel;
 - (B) Methanol, 0.11 times the rate for diesel;
 - (C) Biodiesel, 0.25 times the rate for diesel;
 - (D) Liquefied petroleum gas, 0.33 times the rate for diesel; and
 - (E) For other alternative fuels, the rate shall be based on the energy content of the fuels as compared to diesel fuel, using a lower heating value of one hundred thirty thousand British thermal units per gallon as a standard for diesel, so that the tax rate, on an energy content basis, is equal to one-quarter the rate for diesel fuel.

The taxes so paid shall be paid into the state treasury and deposited in special funds or paid over in the same manner as provided in subsection (b) in respect of the tax on diesel oil;

- (3) If any user of alternative fuel furnishes to the distributor a certificate, in [sueh] a form [as] that the department shall prescribe[;] or if the distributor who uses alternative fuel signs [sueh] the certificate, certifying that the alternative fuel is for use in operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the tax as provided by paragraphs (1) and (2) of this subsection shall not be applicable; provided that no certificate shall be required if the alternative fuel is used for fuel and heating purposes in the home. [~~In the event~~] If a certificate is not or cannot be furnished and the

alternative fuel is in fact used for operating an internal combustion engine or operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon imposed by ~~[such]~~ the foregoing paragraphs. The department shall adopt rules to administer the refunding of ~~[such]~~ these taxes ~~[imposed]~~.

(d) No tax shall be collected in respect to any liquid fuel, including diesel oil and liquefied petroleum gas, shown to the satisfaction of the department to have been sold for use in and actually delivered to, or sold in, the county of Kalawao.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that:

- (1) The amendments made to this Act to:
 - (A) The definition of “power-generating facility” in section 243-1, Hawaii Revised Statutes; and
 - (B) Section 243-4(a), Hawaii Revised Statutes; shall be repealed on December 31, 2009, and section 243-4(a), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and
- (2) The rate of tax for naphtha as provided for in section 243-4(a)(3), Hawaii Revised Statutes, shall be effective retroactively and apply to any imposition of the fuel tax on naphtha sold for use in a power-generating facility.

(Approved May 29, 2007.)