TAX FACTS

From the
State of Hawaii, Department of Taxation

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TAXATION OF MOTOR CARRIERS - PUBLIC SERVICE COMPANY TAX LAW

98-2

This publication is intended to provide general information about the public service company tax as it applies to motor carriers providing contract services for the transportation of freight or passengers on the public highways of the State. Therefore, the information provided in this publication is presented in the context of motor carriers providing contract services. Monopoly-type public utilities, subject to section 239-5, HRS, are subject to different tax calculation mechanics and are immune from different types of taxes than are motor carriers. Taxicabs are taxable under chapter 237, HRS, the General Excise Tax Law. Taxpayers seeking information about other taxpayer types subject to the public service company tax under chapter 239, HRS, should contact the Department of Taxation for assistance.

1. What is the public service company tax?

With regard to motor carriers, the tax is a means of taxing the personal property of the carrier, tangible and intangible, including the going concern value, and is in lieu of the tax imposed by chapter 237, the General Excise Tax Law, but is not in lieu of any other tax. The tax is generally measured at four percent (4%) of the carrier's taxable gross income from the public service company business earned during the carrier's previous taxable (operational) year.

2. When is the public service company tax imposed?

The tax is imposed on the first day of the carrier's selected year. Therefore, for a carrier on a calendar year basis, it is imposed on January 1 of each year; for a fiscal year basis carrier, it is imposed on the first day of the selected fiscal year. The tax is imposed and is due in full on the date of imposition; it is not accrued or imposed incrementally throughout the calendar or fiscal year.

3. When is the public service company tax return due?

The public service company tax return, Form U-6, is due on or before the twentieth day of the fourth month following the date of imposition. Stated differently, the tax is due on or before the twentieth day of the fourth month in the taxable year. For a calendar year basis taxpayer, it is due on or before April 20, of each return year.

4. When is the tax payable?

The tax is payable on or before the twentieth day of the fourth month following the date of imposition. This date coincides with the due-date of the public service company tax return, Form U-6. If, however, the total tax liability for the taxable year exceeds $100,000, the taxes must be paid in twelve equal installments, with the installments due on or before the tenth day of each month of the taxable year.

The statute allows carriers with total tax liabilities of $100,000 or less, to elect to pay the tax due in equal, quarterly installments on or before the twentieth day of each defined quarter, which are on the fourth, sixth, ninth, and twelfth months of the taxable year. For motor carriers electing or required to pay on an installment basis, Form FP-1, containing twelve vouchers, is available for their use.

Carriers with tax liabilities exceeding $100,000 annually should estimate the installment due for the first few months, until their gross income for the preceding taxable year is known, then divide the remaining or unpaid tax due by the remaining number of monthly installments due and remit according to the prescribed payment dates for the respective installment schedule.

5. What happens if the carrier fails to meet the elected payment schedule?

If the carrier fails to make any scheduled payment, the Department, at its election, may cause the balance of the unpaid tax to become payable upon not less than ten days' notice, and the balance of the unpaid tax must be paid by the date specified in the notice and demand from the Department.

6. What happens if the carrier terminates the

transportation (carriage) portion of its business during the year?

Since the tax is imposed and payable in full on the date of imposition, which is on the first day of the selected year, the termination of the carrier's transportation business does not affect the carrier's liability for the tax. As such, the carrier is required to remit the taxes due on the elected schedule.

The taxable gross income earned during the year of termination of the carrier's transportation business will not be used as a measure of a public service company tax because a tax and tax return, using the taxable gross income of the final year of operation as a measure of the tax, will not be due. This is because the carrier will not be in the transportation business on the next annual date of imposition, i.e., on the first day of the next year.

7. How does the carrier prepare the public service company tax return, Form U-6?

The tax imposed for the year is calculated by taking four percent (4%) of the gross income from the carrier's business from the previous operating year. Please note that the imposition uses as a measure, the previous year's gross income from the public service business, but is not being imposed for the previous year. For example, a public service company tax return for the calendar year 1998 is filed for the tax imposed on January 1, 1998, and is due on April 20, 1998. The tax is calculated by using the carrier's gross income from the carrier's business during the 1997 calendar year. To pay on an installment schedule, simply file the Form U-6 along with the appropriate voucher from the Form FP-1, accompanied by the appropriate installment payment amount. All information requested on the return and payment voucher must be furnished.

8. What if this is the carrier's first year of doing business?

In the carrier's first year of doing business, the tax is imposed on the first day, or commencement date, of the carrier's public service company business. The public service company tax return is filed by using an estimate of the gross income from the public service company business for that portion of the first year that the carrier is engaged in business. The tax return and payment are due on the twentieth day of the third month after the month that the carrier begins business. The estimate must be corrected to reflect the actual gross income for the year via an amended return which must be filed by the twentieth day of the fourth month following the close of the first taxable year. The amended return is used to claim the appropriate overpayment or pay any additional taxes due. The Form U-6, with the word "Amended" written on the top portion of the return, can be used to amend the originally-filed return. The tax computation section of the Form U-6, can accommodate the computation needed to correct the original return filed.

9. What if this is the carrier's second year of doing business?

The carrier's return for its second year of doing business uses an estimate of the carrier's average monthly gross income during the period from and after the commencement of business to the close of the second year, multiplied by twelve. An amended return is required to adjust the estimate to the actual average monthly gross income for the period, multiplied by twelve. Any overpayment is claimed or balance due is reported and paid on the amended return. The amended return is due on or before the twentieth day of the fourth month following the close of the carrier's second taxable year.

10. What if this is the carrier's third year of doing business?

In the carrier's third year of doing business, the carrier files a public service company tax return and calculates the tax due based on four percent (4%) of the carrier's gross income from the previous taxable year. Since the tax is not based on an estimate, no amended return is needed.

11. What does the carrier do if the carrier acquires another motor carrier's business?

Whenever a public service company acquires, during the preceding year, the business of another public service company liable for the public service company tax for the previous year, and the acquiring company continues the operation of the acquired business, the gross income reported by the acquiring company must include, in addition to its gross income, the gross income of the acquired business for the pre-acquisition part of the preceding year. Therefore, the acquiring company's gross income for the year after the year of acquisition (measure of the tax for the year after the year of acquisition), includes the gross income earned by the acquired business for the portion of the year before acquisition, i.e., the acquired business' gross income from the public service company for the full year is used.

12. What if two or more public service companies merge?

Whenever there is a merger of public service *companies, the gross income used to measure the tax under this chapter must include the gross income of the companies which were merged, and the liability will attach or be taxable to the newly formed company.*

13. What happens if, instead of acquiring another public service company or merging public service companies, a carrier purchases the equipment of another public service company and uses the equipment in its continuing and separate business?

In this situation, the purchasing carrier is not continuing the business of the company whose equipment has been purchased. Therefore, the purchasing carrier would be unaffected by the selling carrier's income.

14. What happens if a carrier purchases another carrier's assets, including its customer list and name, but not the going concern, and creates a branch office and uses the purchased carrier's equipment, name and customer list?

In this case, the carrier purchasing the assets, customer list, and name (acquiring carrier) will be considered to be continuing the business of the selling carrier (selling carrier) whose equipment, name and customer list was purchased. It is not necessary to purchase the going concern in order to be effectively continuing the business of the selling carrier. In this case, the carrier whose assets were purchased is not being acquired, but the business of the selling carrier is being continued. Since the business is being continued, the gross income of the selling carrier for the pre-acquisition part of the year related to the continued business, must be reflected in the acquiring carrier's gross income for the purpose of computing the public service company tax due for the succeeding taxable year.

15. What is the relationship between the "previous year's gross income" and the imposition for the current year?

The value of the carrier's personal property on the date of imposition is measured by or determined to be equal to the carrier's public service company gross income from the previous taxable year. The previous taxable year must be a full twelve month period. Therefore, the tax is imposed for the current taxable (return) year, and uses in its calculation, the carrier's gross income from the carrier's previous taxable year.

16. What is the relationship between the general excise tax law and the public service company tax law?

The general excise tax is a broad-based tax imposition which taxes every business transaction, unless exempted by statute. However, section 237-23(a)(1), HRS, exempts from the general excise tax law, those activities which are taxed under the public service company tax law. Therefore, a carrier's gross income will be subject to either the general excise tax or public service company tax.

17. What is the relationship between the public service company tax and the Public Utilities Commission?

Through the definition of a public utility under section 239-2, HRS, which refers to the definition provided under section 269-1, HRS, motor carriers defined and regulated under chapter 269, HRS, are subject to the public service company tax. However, most motor carriers are regulated under chapter 271, HRS, Motor Carrier Law, which is also administered by the Public Utilities Commission. Motor carriers are therefore included or taxable under the public service company tax law through the definition of a "carrier," "common carrier," and "motor carrier," contained in section 239-2, HRS. The taxable motor carrier activity under chapter 239, HRS, is limited to transportation between points within the State.

18. What income of a carrier is subject to the public service company tax?

Chapter 239 subjects to the tax, a carrier's gross income from the transportation of passengers or freight (property) by means of equipment located in the State, between points in the State. Therefore, carriers are subject to the public service company tax only on income derived from their transportation activities. Ancillary activities, such as the packing of household goods for a moving contract by a moving company, should be considered to be a part of the transportation activity. Activities such as retailing, rentals, etc., must be reported under chapter 237, HRS, the General Excise Tax Law.

19. Are there any deductions from the carrier's gross income allowed under the law?

The law does not provide for any deductions from the gross income of the carrier. However, section 239-2, HRS, defines gross income to allow a special handling where tourism related services are furnished through arrangements made by a travel agent or tour packager and the gross income is divided between the motor carrier, on the one hand, and the travel agency or tour provider, on the other hand, with the result that any tax imposed by this chapter shall apply to a motor *carrier's portion of the proceeds, and no more. This, in essence, allows the motor carrier to recognize as gross income the net amount received from the travel agent or tour packager.*

Act 125, SLH 1998, effective June 22 , 1998, provides that accounts found to be worthless (bad debts) and actually charged off for income tax purposes, at corresponding periods, may be deducted from gross income so far as they reflect taxable sales made, but shall be added to gross income when and if subsequently collected. The change in the law also allows motor carriers to divide passenger or freight revenue among motor carriers, where the motor carriers jointly work to discharge a contract.

20. At the time of a transaction where the income is divided between the travel agent or tour packager and the carrier, how will the tourism related services and other provisions under Act 125, SLH 1998, affect the public services company tax?

There will be no effect in the year that the services are provided to the tourist and the income is divided with the travel agent or tour packager, etc. This is because the tax for the year is imposed on the first day of the taxable year and is measured by the gross income from the immediately preceding taxable year. Since this is the case, the effect of the division of income will be realized on the imposition for the year which uses the affected income to calculate or measure the tax due, i.e., the succeeding year.

21. The general excise tax law allows a one-half percent rate of tax under the intermediary services provision. Does the public service company tax law contain a similar provision?

With respect to motor carriers, the public service company tax law does not contain a one-half percent provision. Only a four percent (4%) rate is provided under the chapter.

22. The general excise tax law allows a subcontract deduction for subcontracted amounts. Does the public service company tax law allow a similar deduction?

The public service company tax law does not allow subcontract deductions similar to the situation for contractors under the general excise tax law.

However, Act 125, SLH 1998, effective June 22, 1998, allows motor carriers to divide gross income between themselves where the transportation of passengers or property is furnished through arrangements between motor carriers.

23. Who is subject to the public service company tax law?

Every public service company is subject to the imposition under the chapter. A public service company is defined to be, "...a public utility, motor carrier, or contract carrier." Chapter 239, HRS, defines a "carrier" to mean a person who engages in transportation, and does not include a person such as a freight forwarder who provides transportation by contracting with others, except to the extent that such person oneself engages in transportation. The chapter goes on to define "contract carrier" to mean a person other than a public utility or taxicab which, under contracts or agreements, engages in the transportation of persons or property for compensation, by land, water, or air. Next, "motor carrier" is defined as a common carrier transporting freight or other property on the public highways, other than a public utility or taxi.

In summary, every person who contracts with others to transport and actually engages in the transportation of passengers or freight is subject to the public service company tax. Within the definition, taxicabs and freight forwarders who are not engaging in the actual transportation of freight are not subject to the public service company tax but are taxable under chapter 237, HRS, the General Excise Tax law.

24. What administrative provisions apply to the public service company tax law?

All administrative provisions under chapter 235, HRS, the Net Income Tax Law, not inconsistent with provisions under chapter 239, HRS, are applicable to and made a part of the public service company tax law.

25. Is a carrier subject to the public service company tax if the carrier has a contract with the federal government to provide moving services for its service personnel?

Yes. There is no exemption for transportation services provided to the federal government. Transportation services provided to the state and county governments also are not exempt from the public service company tax.

26. A contract with the federal government requires me to move the household furnishings of their personnel from their old quarters instate, to their new quarters located out-of-state. Am I subject to the public service company tax, and if so, what portion of my receipts is subject to the tax?

Your receipts for the instate portion of the transportation is considered to be taxable gross income *which is used to measure the public service company tax. If an apportionment of the billing to the federal government is needed, section 239-8, HRS, provides a direct-cost based apportionment mechanism to accomplish the apportionment.*

27. How does a carrier apportion income under the public service company tax law?

Section 239-8, HRS, provides a direct-cost based apportionment, if an apportionment of the gross income of a motor carrier is necessary. The fraction represented by the instate portion of the direct costs incurred in the transportation over the total direct costs incurred in the transportation, multiplied by the income requiring apportionment, would result in the instate portion of the income, which is used to measure the public service company tax.

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http://www.state.hi.us/tax/tax.html

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