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# A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAX.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1.   Section 237-24.3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§237-24.3 Additional amounts not taxable.** In addition to  
4 the amounts not taxable under section 237-24, this chapter shall  
5 not apply to:

6           (1) Amounts received from the loading, transportation, and  
7 unloading of agricultural commodities shipped for a  
8 producer or produce dealer on one island of this State  
9 to a person, firm, or organization on another island  
10 of this State. The terms "agricultural commodity",  
11 "producer", and "produce dealer" shall be defined in  
12 the same manner as they are defined in section 147-1;  
13 provided that agricultural commodities need not have  
14 been produced in the State;

15           (2) Amounts received from sales of:

16           (A) Intoxicating liquor as the term "liquor" is  
17 defined in chapter 244D;



- 1 (B) Cigarettes and tobacco products as defined in  
2 chapter 245; and
- 3 (C) Agricultural, meat, or fish products;  
4 to any person or common carrier in interstate or  
5 foreign commerce, or both, whether ocean-going or air,  
6 for consumption out-of-state on the shipper's vessels  
7 or airplanes;
- 8 (3) Amounts received by the manager, submanager, or board  
9 of directors of:
- 10 (A) An association of apartment owners of a  
11 condominium property regime established in  
12 accordance with chapter 514A or 514B; or
- 13 (B) A nonprofit homeowners or community association  
14 incorporated in accordance with chapter 414D or  
15 any predecessor thereto and existing pursuant to  
16 covenants running with the land,  
17 in reimbursement of sums paid for common expenses;
- 18 (4) Amounts received or accrued from:
- 19 (A) The loading or unloading of cargo from ships,  
20 barges, vessels, or aircraft, whether or not the  
21 ships, barges, vessels, or aircraft travel



- 1           between the State and other states or countries  
2           or between the islands of the State;
- 3           (B) Tugboat services including pilotage fees  
4           performed within the State, and the towage of  
5           ships, barges, or vessels in and out of state  
6           harbors, or from one pier to another; and
- 7           (C) The transportation of pilots or governmental  
8           officials to ships, barges, or vessels offshore;  
9           rigging gear; checking freight and similar  
10          services; standby charges; and use of moorings  
11          and running mooring lines;
- 12          (5) Amounts received by an employee benefit plan by way of  
13          contributions, dividends, interest, and other income;  
14          and amounts received by a nonprofit organization or  
15          office, as payments for costs and expenses incurred  
16          for the administration of an employee benefit plan;  
17          provided that this exemption shall not apply to any  
18          gross rental income or gross rental proceeds received  
19          after June 30, 1994, as income from investments in  
20          real property in this State; and provided further that  
21          gross rental income or gross rental proceeds from  
22          investments in real property received by an employee



1 benefit plan after June 30, 1994, under written  
2 contracts executed prior to July 1, 1994, shall not be  
3 taxed until the contracts are renegotiated, renewed,  
4 or extended, or until after December 31, 1998,  
5 whichever is earlier. For the purposes of this  
6 paragraph, "employee benefit plan" means any plan as  
7 defined in section 1002(3) of title 29 of the United  
8 States Code, as amended;

9 (6) Amounts received for purchases made with United States  
10 Department of Agriculture food coupons under the  
11 federal food stamp program, and amounts received for  
12 purchases made with United States Department of  
13 Agriculture food vouchers under the Special  
14 Supplemental Foods Program for Women, Infants and  
15 Children;

16 (7) Amounts received by a hospital, infirmary, medical  
17 clinic, health care facility, pharmacy, or a  
18 practitioner licensed to administer the drug to an  
19 individual for selling prescription drugs or  
20 prosthetic devices to an individual; provided that  
21 this paragraph shall not apply to any amounts received



1 for services provided in selling prescription drugs or  
2 prosthetic devices. As used in this paragraph:

3 [~~A~~] "Prescription drugs" are those drugs defined  
4 under section 328-1 and dispensed by filling or  
5 refilling a written or oral prescription by a  
6 practitioner licensed under law to administer the drug  
7 and sold by a licensed pharmacist under section 328-16  
8 or practitioners licensed to administer drugs; and

9 [~~B~~] "Prosthetic device" means any artificial device  
10 or appliance, instrument, apparatus, or contrivance,  
11 including their components, parts, accessories, and  
12 replacements thereof, used to replace a missing or  
13 surgically removed part of the human body, which is  
14 prescribed by a licensed practitioner of medicine,  
15 osteopathy, or podiatry and which is sold by the  
16 practitioner or which is dispensed and sold by a  
17 dealer of prosthetic devices; provided that  
18 "prosthetic device" shall not mean any auditory,  
19 ophthalmic, dental, or ocular device or appliance,  
20 instrument, apparatus, or contrivance;



- 1           (8) Taxes on transient accommodations imposed by chapter
- 2                   237D and passed on and collected by operators holding
- 3                   certificates of registration under that chapter;
- 4           (9) Amounts received as dues by an unincorporated
- 5                   merchants association from its membership for
- 6                   advertising media, promotional, and advertising costs
- 7                   for the promotion of the association for the benefit
- 8                   of its members as a whole and not for the benefit of
- 9                   an individual member or group of members less than the
- 10                  entire membership;
- 11          (10) Amounts received by a labor organization for real
- 12                  property leased to:
- 13                  (A) A labor organization; or
- 14                  (B) A trust fund established by a labor organization
- 15                          for the benefit of its members, families, and
- 16                          dependents for medical or hospital care, pensions
- 17                          on retirement or death of employees,
- 18                          apprenticeship and training, and other membership
- 19                          service programs.
- 20                  As used in this paragraph, "labor organization" means
- 21                  a labor organization exempt from federal income tax



1 under section 501(c)(5) of the Internal Revenue Code,  
2 as amended;

3 (11) Amounts received from foreign diplomats and consular  
4 officials who are holding cards issued or authorized  
5 by the United States Department of State granting them  
6 an exemption from state taxes; and

7 (12) Amounts received as rent for the rental or leasing of  
8 aircraft or aircraft engines used by the lessees or  
9 renters for interstate air transportation of  
10 passengers and goods. For purposes of this paragraph,  
11 payments made pursuant to a lease shall be considered  
12 rent regardless of whether the lease is an operating  
13 lease or a financing lease. The definition of  
14 "interstate air transportation" is the same as in 49  
15 U.S.C. 40102."

16 SECTION 2. Section 237-24.7, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "§237-24.7 **Additional amounts not taxable.** In addition to  
19 the amounts not taxable under section 237-24, this chapter shall  
20 not apply to:

21 (1) Amounts received by the operator of a hotel from the  
22 owner of the hotel or from a timeshare association,



1           and amounts received by the suboperator of a hotel  
2           from the owner of the hotel, from a timeshare  
3           association, or from the operator of the hotel, in  
4           amounts equal to and which are disbursed by the  
5           operator or suboperator for employee wages, salaries,  
6           payroll taxes, insurance premiums, and benefits,  
7           including retirement, vacation, sick pay, and health  
8           benefits. As used in this paragraph:

9           "Employee" means employees directly engaged in  
10          the day-to-day operation of the hotel and employed by  
11          the operator[-] or suboperator.

12          "Hotel" means an operation as defined in section  
13          445-90[-] or a timeshare plan as defined in section  
14          514E-1.

15          "Operator" means any person who, pursuant to a  
16          written contract with the owner of a hotel[-] or  
17          timeshare association, operates or manages the hotel  
18          for the owner[-] or timeshare association.

19          "Owner" means the fee owner or lessee under a  
20          recorded lease of a hotel[-].





1           "Suboperator" means any person who, pursuant to a  
2           written contract with the operator, operates or  
3           manages the hotel as a subcontractor of the operator.

4           "Timeshare association" means an "association" as  
5           that term is defined in section 514E-1;

6           (2) Amounts received by the operator of a county  
7           transportation system operated under an operating  
8           contract with a political subdivision, where the  
9           political subdivision is the owner of the county  
10          transportation system. As used in this paragraph:

11           "County transportation system" means a mass  
12          transit system of motorized buses providing regularly  
13          scheduled transportation within a county.

14           "Operating contract" or "contract" means a  
15          contract to operate and manage a political  
16          subdivision's county transportation system, which  
17          provides that:

18           (A) The political subdivision shall exercise  
19           substantial control over all aspects of the  
20           operator's operation;



- 1 (B) The political subdivision controls the
- 2 development of transit policy, service
- 3 planning, routes, and fares; and
- 4 (C) The operator develops in advance a draft
- 5 budget in the same format as prescribed for
- 6 agencies of the political subdivision. The
- 7 budget must be subject to the same
- 8 constraints and controls regarding the
- 9 lawful expenditure of public funds as any
- 10 public sector agency, and deviations from
- 11 the budget must be subject to approval by
- 12 the appropriate political subdivision
- 13 officials involved in the budgetary process.

14 "Operator" means any person who, pursuant to an  
15 operating contract with a political subdivision,  
16 operates or manages a county transportation system.

17 "Owner" means a political subdivision that owns  
18 or is the lessee of all the properties and facilities  
19 of the county transportation system (including buses,  
20 real estate, parking garages, fuel pumps, maintenance  
21 equipment, office supplies, etc.), and that owns all  
22 revenues derived therefrom;



1 (3) Surcharge taxes on rental motor vehicles imposed by  
2 chapter 251 and passed on and collected by persons  
3 holding certificates of registration under that  
4 chapter;

5 (4) Amounts received by the operator of orchard properties  
6 from the owner of the orchard property in amounts  
7 equal to and which are disbursed by the operator for  
8 employee wages, salaries, payroll taxes, insurance  
9 premiums, and benefits, including retirement,  
10 vacation, sick pay, and health benefits. As used in  
11 this paragraph:

12 "Employee" means an employee directly engaged in  
13 the day-to-day operations of the orchard properties  
14 and employed by the operator.

15 "Operator" means a producer who, pursuant to a  
16 written contract with the owner of the orchard  
17 property, operates or manages the orchard property for  
18 the owner where the property contains an area  
19 sufficient to make the undertaking economically  
20 feasible.

21 "Orchard property" means any real property that  
22 is used to raise trees with a production life cycle of



1           fifteen years or more producing fruits or nuts having  
2           a normal period of development from the initial  
3           planting to the first commercially saleable harvest of  
4           not less than three years.

5                       "Owner" means a fee owner or lessee under a  
6           recorded lease of orchard property;

7           (5) Taxes on nursing facility income imposed by chapter  
8           346E and passed on and collected by operators of  
9           nursing facilities;

10          (6) Amounts received under property and casualty insurance  
11          policies for damage or loss of inventory used in the  
12          conduct of a trade or business located within the  
13          State or a portion thereof that is declared a natural  
14          disaster area by the governor pursuant to section 209-  
15          2;

16          (7) Amounts received as compensation by community  
17          organizations, school booster clubs, and nonprofit  
18          organizations under a contract with the chief election  
19          officer for the provision and compensation of precinct  
20          officials and other election-related personnel,  
21          services, and activities, pursuant to section 11-5;



- 1           (8) Interest received by a person domiciled outside the  
2           State from a trust company (as defined in section  
3           412:8-101) acting as payment agent or trustee on  
4           behalf of the issuer or payees of an interest bearing  
5           instrument or obligation, if the interest would not  
6           have been subject to tax under this chapter if paid  
7           directly to the person domiciled outside the State  
8           without the use of a paying agent or trustee; provided  
9           that if the interest would otherwise be taxable under  
10          this chapter if paid directly to the person domiciled  
11          outside the State, it shall not be exempt solely  
12          because of the use of a Hawaii trust company as a  
13          paying agent or trustee;
- 14          (9) Amounts received by a management company from related  
15          entities engaged in the business of selling interstate  
16          or foreign common carrier telecommunications services  
17          in amounts equal to and which are disbursed by the  
18          management company for employee wages, salaries,  
19          payroll taxes, insurance premiums, and benefits,  
20          including retirement, vacation, sick pay, and health  
21          benefits. As used in this paragraph:



1 "Employee" means employees directly engaged in  
2 the day-to-day operation of related entities engaged  
3 in the business of selling interstate or foreign  
4 common carrier telecommunications services and  
5 employed by the management company.

6 "Management company" means any person who,  
7 pursuant to a written contract with a related entity  
8 engaged in the business of selling interstate or  
9 foreign common carrier telecommunications services,  
10 provides managerial or operational services to that  
11 entity.

12 "Related entities" means:

13 (A) An affiliated group of corporations within  
14 the meaning of section 1504 (with respect to  
15 affiliated group defined) of the federal  
16 Internal Revenue Code of 1986, as amended;

17 (B) A controlled group of corporations within  
18 the meaning of section 1563 (with respect to  
19 definitions and special rules) of the  
20 federal Internal Revenue Code of 1986, as  
21 amended;



1 (C) Those entities connected through ownership  
 2 of at least eighty per cent of the total  
 3 value and at least eighty per cent of the  
 4 total voting power of each such entity (or  
 5 combination thereof), including  
 6 partnerships, associations, trusts, S  
 7 corporations, nonprofit corporations,  
 8 limited liability partnerships, or limited  
 9 liability companies; and

10 (D) Any group or combination of the entities  
 11 described in paragraph (C) constituting a  
 12 unitary business for income tax purposes;  
 13 whether or not the entity is located within or without  
 14 the State or licensed under this chapter; and

15 (10) Amounts received as grants under section 206M-15."

16 SECTION 3. Statutory material to be repealed is bracketed  
 17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect on January 1, 2008;  
 19 provided that this Act shall be repealed on December 31, 2009,  
 20 and section 237-24.3, Hawaii Revised Statutes, and section 237-  
 21 24.7, Hawaii Revised Statutes, shall be reenacted in the form in  
 22 which they read on December 31, 2007.



H.B. NO. 1719  
H.D. 1  
S.D. 1  
C.D. 1

**Report Title:**

General Excise Tax

**Description:**

Extends the current general excise tax exemptions for condominium common expenses paid by managers and hotel employee expenses paid by hotel operators, to include expenses paid by submanagers and suboperators and to include employee expenses in timeshare projects. Sunset date. (HB1719 CD1)

