

A BILL FOR AN ACT

RELATING TO PROFESSIONAL EMPLOYMENT ORGANIZATIONS.

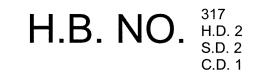
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to eliminate 2 duplicative taxation and thereby allow Hawaii businesses to 3 increase efficiency and cost savings by contracting to have 4 their payroll and payroll-related functions performed by a 5 professional employment organization. Since the contracting 6 company makes general excise tax payments on the funds used for 7 payroll, it is appropriate to exempt the contracted professional employment organization from further taxation on the same 8 9 payroll moneys. The general excise tax would still apply to the fee paid to the professional employment organization for 10 11 performing the contracted payroll services. Hawaii's businesses 12 have not been able to take advantage of the rapidly growing 13 mainland trend of using professional employment organizations 14 because the taxes on payroll pass-through moneys can be 15 substantially more than the fee for those services. 16 This tax exemption has precedent in Hawaii law. For

example, there is a similar exemption for the funds that hotel

HB317 CD1 HMS 2007-4210

Page 2



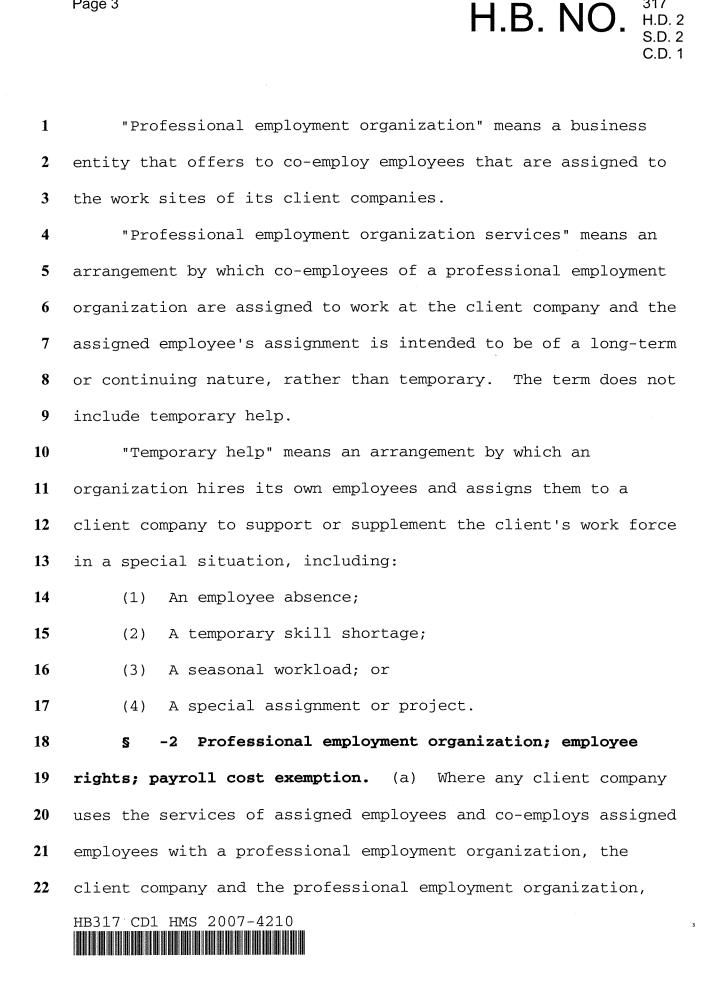
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1	management companies receive from the hotel they manage, in
2	reimbursement for performing payroll and related functions.
3	SECTION 2. The Hawaii Revised Statutes is amended by
4	adding a new chapter to be appropriately designated and to read
5	as follows:
6	"CHAPTER
7	PROFESSIONAL EMPLOYMENT ORGANIZATIONS
8	§ -1 Definitions. As used in this chapter, unless the
9	context otherwise requires:
10	"Assigned employee" means an employee under a professional
11	employment organization arrangement whose work is performed in
12	the state. The term does not include an employee hired to
13	support or supplement a client company's work force as temporary
14	help. "Assigned employee" has the same meaning as the term
15	"leased employee" as defined in section 414(n) (with respect to
16	employee leasing) of the Internal Revenue Code of 1986, as
17	amended.

18 "Client company" means a person that contracts with a
19 professional employment organization and is assigned employees
20 by the professional employment organization under that contract.

HB317 CD1 HMS 2007-4210

Page 3



Page 4

H.B. NO. ³¹⁷ H.D. 2 S.D. 2 C.D. 1

with respect to the assigned employees, shall not be exempt from 1 the requirements of any federal, state, or county law, including 2 labor or employment laws, collective bargaining rights, anti-3 4 discrimination provisions, or other laws with respect to the protection and rights of employees, including chapters 377 and 5 378, that would apply to the assigned employees if the assigned 6 employees were employees of the client company alone, and were 7 8 not co-employees of the professional employment organization.

9 These employee rights shall not be abrogated by any 10 contract or agreement between the client company and the professional employment organization, or the professional 11 12 employment organization and the assigned employee, which 13 contains terms or conditions that could not be lawfully 14 contained in a contract or agreement directly between the client 15 company and the assigned employee in which no professional 16 employment organization is involved. Notwithstanding any 17 statute, local ordinance, executive order, rule, or regulation to the contrary, where the laws, rights, and protections 18 19 referred to in this section define or require a determination of 20 the "employer", the employer shall be deemed to be the client 21 company and not the professional employment organization. The 22 department of labor and industrial relations shall notify the HB317 CD1 HMS 2007-4210



department of taxation in writing of any violation of this
 subsection.

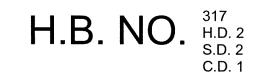
3 The client company shall be deemed to have satisfied (b) its obligations with respect to any assigned employee under any 4 5 applicable law, including, without limitation, workers' 6 compensation laws including chapter 386, employee insurance 7 coverage laws including chapters 383, 385, 392, and 393, and tax 8 withholding and reporting laws, if and to the extent that those 9 obligations are satisfied by the professional employment 10 organization acting in its capacity as co-employer of such 11 assigned employee.

12 (C) Amounts received by a professional employment 13 organization from a client company in amounts equal to and that 14 are disbursed by the professional employment organization for 15 employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick leave, health 16 17 benefits, and similar employment benefits with respect to 18 assigned employees at a client company shall not be subject to 19 the general excise tax as provided by section 237-24.75. 20 The general excise tax exemption under section (d)

21 237-24.75 shall not apply to the professional employment
22 organization if:

HB317 CD1 HMS 2007-4210

Page 6



1	(1)	By or through any contract between the client company	
2		and any professional employment organization, or	
3		otherwise, employees are excluded from any employee	
4		rights or employee benefits required by law to be	
5		provided to employees of the client company by the	
6		client company; or	
7	(2)	The professional employment organization fails to pay	
8		any tax withholding for assigned employees or any	
9		federal or state taxes for which the professional	
10		employment organization is responsible."	
11	SECTION 3. Section 237-24.75, Hawaii Revised Statutes, is		
12	amended to read as follows:		
13	"[+]	§237-24.75[] Additional exemptions. In addition to	
13 14		§237-24.75 [] Additional exemptions. In addition to ts exempt under section 237-24, this chapter shall not	
	the amoun		
14	the amoun	ts exempt under section 237-24, this chapter shall not amounts received [as] <u>:</u>	
14 15	the amoun apply to	ts exempt under section 237-24, this chapter shall not amounts received [as] <u>:</u>	
14 15 16	the amoun apply to	ts exempt under section 237-24, this chapter shall not amounts received [as] <u>:</u> <u>As</u> a beverage container deposit collected under	
14 15 16 17	the amoun apply to <u>(1)</u>	ts exempt under section 237-24, this chapter shall not amounts received $[as]:$ <u>As</u> a beverage container deposit collected under chapter 342G, part VIII $[-;]$; and	
14 15 16 17 18	the amoun apply to <u>(1)</u>	ts exempt under section 237-24, this chapter shall not amounts received [as]: <u>As</u> a beverage container deposit collected under chapter 342G, part VIII[-]; and <u>By a professional employment organization from a</u>	
14 15 16 17 18 19	the amoun apply to <u>(1)</u>	ts exempt under section 237-24, this chapter shall not amounts received [as]: <u>As</u> a beverage container deposit collected under chapter 342G, part VIII[-;]; and <u>By a professional employment organization from a</u> <u>client company equal to amounts that are disbursed by</u>	
14 15 16 17 18 19 20	the amoun apply to <u>(1)</u>	ts exempt under section 237-24, this chapter shall not amounts received $[as]:$ <u>As a beverage container deposit collected under</u> chapter 342G, part VIII $[-];$ and <u>By a professional employment organization from a</u> <u>client company equal to amounts that are disbursed by</u> <u>the professional employment organization for employee</u>	

Page 7

H.B. NO. ³¹⁷ H.D. 2 S.D. 2 C.D. 1

1	leave, health benefits, and similar employment
2	benefits with respect to assigned employees at a
3	client company; provided that this exemption shall not
4	apply to a professional employment organization upon
5	failure of the professional employment organization to
6	collect, account for, and pay over any income tax
7	withholding for assigned employees or any federal or
8	state taxes for which the professional employment
9	organization is responsible. As used in this
10	paragraph, "professional employment organization",
11	"client company", and "assigned employee" shall have
12	the meanings provided in section -1."
13	SECTION 4. Statutory material to be repealed is bracketed
14	and stricken. New statutory material is underscored.
15	SECTION 5. This Act shall take effect on July 1, 2007;
16	provided that section 3 shall apply to gross income or gross
17	proceeds received after June 30, 2007.



H.B. NO. 317 H.D. 2 S.D. 2 C.D. 1

Report Title:

GET; Exemption; Professional Employment Organization

Description:

Exempts from the general excise tax amounts that a client company pays to a professional employment organization that will be expended to pay the wages, salaries, payroll taxes, and benefits of the employees hired by a client company; provides that the exemption shall not apply if the professional employment organization has failed to pay any tax withholding or any federal or state taxes. (HB317 CD1)



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