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## A BILL FOR AN ACT

RELATING TO EXEMPTIONS FROM THE GENERAL EXCISE TAX.

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

1           SECTION 1. Section 237-8.6, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:

3           "(d) No county surcharge on state tax shall be established  
4 on any:

5           (1) Gross income or gross proceeds taxable under this  
6 chapter at the one-half per cent tax rate;

7           (2) Gross income or gross proceeds taxable under this  
8 chapter at the 0.15 per cent tax rate; ~~or~~

9           ~~(3)]~~ (3) Gross proceeds or income arising from the  
10 manufacture, production, packaging, and sale of food  
11 items within the State, as defined in chapter 237-  
12 ; or

13           (4) Transactions, amounts, persons, gross income, or  
14 gross proceeds exempt from tax under this chapter.

15           SECTION 2. Section 237-23, Hawaii Revised Statutes, is  
16 amended to read as follows:



1           "§237-23 Exemptions, persons exempt, applications for  
2 exemption. (a) This chapter shall not apply to the following  
3 persons:

4           (1) Public service companies (as that term is defined in  
5 section 239-2), with respect to the gross income,  
6 either actual gross income or gross income estimated  
7 and adjusted, which is included in the measure of the  
8 tax imposed by chapter 239;

9           (2) Public utilities owned and operated by the State or  
10 any county or other political subdivision thereof;

11           (3) Fraternal benefit societies, orders, or associations,  
12 operating under the lodge system, or for the exclusive  
13 benefit of the members of the fraternity itself,  
14 operating under the lodge system, and providing for  
15 the payment of death, sick, accident, prepaid legal  
16 services, or other benefits to the members of such  
17 societies, orders, or associations, and to their  
18 dependents;

19           (4) Corporations, associations, trusts, or societies  
20 organized and operated exclusively for religious,  
21 charitable, scientific, or educational purposes, as  
22 well as that of operating senior citizens housing



1 facilities qualifying for a loan under the laws of the  
2 United States as authorized by section 202 of the  
3 Housing Act of 1959, as amended, as well as that of  
4 operating a prepaid legal services plan, as well as  
5 that of operating or managing a homeless facility, or  
6 any other program for the homeless authorized under  
7 chapter 201G, part IV;

8 (5) Business leagues, chambers of commerce, boards of  
9 trade, civic leagues, agricultural and horticultural  
10 organizations, and organizations operated exclusively  
11 for the benefit of the community and for the promotion  
12 of social welfare which shall include the operation of  
13 a prepaid legal service plan, and from which no profit  
14 inures to the benefit of any private stockholder or  
15 individual;

16 (6) Hospitals, infirmaries, [~~and sanitarium;~~] skilled  
17 nursing facilities, intermediate care facilities,  
18 adult residential care homes, adult foster homes,  
19 adult day care facilities, assisted living facilities,  
20 and sanitarium;

21 (7) Cooperative associations incorporated under chapter  
22 421 or Code section 521 cooperatives which fully meet



1 the requirements of section 421-23, except Code  
2 section 521 cooperatives need not be organized in  
3 Hawaii; provided that:

4 (A) The exemption shall apply only to the gross  
5 income derived from activities which are pursuant  
6 to purposes and powers authorized by chapter 421,  
7 except those provisions pertaining to or  
8 requiring corporate organization in Hawaii do not  
9 apply to Code section 521 cooperatives;

10 (B) The exemption shall not relieve any person who  
11 receives any proceeds of sale from the  
12 association of the duty of returning and paying  
13 the tax on the total gross proceeds of the sales  
14 on account of which the payment was made, in the  
15 same amount and at the same rate as would apply  
16 thereto had the sales been made directly by the  
17 person, and all such persons shall be so taxable;  
18 and

19 (C) As used in this paragraph, "section 521  
20 cooperatives" mean associations which qualify as  
21 a cooperative under section 521 (with respect to



- 1 exemption of farmers' cooperatives from tax) of  
2 the Internal Revenue Code of 1986, as amended;
- 3 (8) Persons affected with Hansen's disease and kokuas,  
4 with respect to business within the county of Kalawao;
- 5 (9) Corporations, companies, associations, or trusts  
6 organized for the establishment and conduct of  
7 cemeteries no part of the net earnings of which inures  
8 to the financial benefit of any private stockholder or  
9 individual (provided that the exemption shall apply  
10 only to the activities of such persons in the conduct  
11 of cemeteries and not to any activity the primary  
12 purpose of which is to produce income, even though the  
13 income is to be used for or in the furtherance of the  
14 exempt activities of such persons); and
- 15 (10) Nonprofit shippers associations operating under part  
16 296 of the Civil Aeronautics Board Economic  
17 Regulations.
- 18 (b) The exemptions enumerated in subsection (a)(3) to  
19 ~~(4)~~ (5) shall apply only:
- 20 (1) To those persons who shall have registered with the  
21 department of taxation by filing a written application  
22 for registration in such form as the department shall



1           prescribe, shall have paid the registration fee of  
2           \$20, and shall have had the exemption allowed by the  
3           department or by a court or tribunal of competent  
4           jurisdiction upon appeal from any assessment resulting  
5           from disallowance of the exemption by the department;

6           (2) To activities from which no profit inures to the  
7           benefit of any private stockholder or individual,  
8           except for death or other benefits to the members of  
9           fraternal societies; and

10          (3) To the fraternal, religious, charitable, scientific,  
11          educational, communal, or social welfare activities of  
12          such persons [~~, or to the activities of such hospitals,~~  
13          ~~infirmaries, and sanitarium as such~~], and not to any  
14          activity the primary purpose of which is to produce  
15          income even though the income is to be used for or in  
16          furtherance of the exempt activities of such persons.

17          (c) To obtain allowance of an exemption:

18          (1) A person under subsection (a) (3) to [~~(6)~~] (5), who has  
19          received or applied for recognition of tax exempt  
20          status under section 501(c) (3), (4), (6), or (8) of  
21          the Internal Revenue Code of 1986, as amended, or who  
22          is a subordinate person of a person who has received a



1 group exemption letter under section 501(c)(3), (4),  
2 (6), or (8) of the Internal Revenue Code of 1986, as  
3 amended, shall register with the department by filing  
4 a statement attaching a copy of the exemption or  
5 application for recognition of exempt status and any  
6 particular facts that the department may require; and

7 (2) All other persons under subsection (a)(3) to [~~4~~] (5)  
8 shall file an application for exemption in the form of  
9 an affidavit or affidavits setting forth in general  
10 all facts affecting the right to the exemption and  
11 such particular facts as the department may require,  
12 to which shall be attached such records, papers, and  
13 other information as the department may prescribe.

14 (d) For all persons, the statement registering the person  
15 with the department or application for exemption shall be filed  
16 on or before March 31 of the first year of registration or  
17 within three months after the commencement of business. In the  
18 event of allowance of the exemption, no further statement or  
19 application therefor need be filed unless there is a material  
20 change in the facts. In the event of disallowance of the  
21 exemption, a license may be obtained upon payment of the  
22 required fee as provided by section 237-9, less the \$20 already



1 paid under this section, which shall be credited thereon. In  
2 the event the registrant has a license under this chapter, no  
3 further fee shall be required for registration under this  
4 section.

5 (e) The department for good cause may extend the time for  
6 registration or the time for filing an application for  
7 exemption."

8 SECTION 3. Section 237-24.3, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§237-24.3 Additional amounts not taxable.** *[Repeal and*  
11 *reenactment on December 31, 2009. L 2007, c 239, §4.]* In  
12 addition to the amounts not taxable under section 237-24, this  
13 chapter shall not apply to:

14 (1) Amounts received from the loading, transportation, and  
15 unloading of agricultural commodities shipped for a  
16 producer or produce dealer on one island of this State  
17 to a person, firm, or organization on another island  
18 of this State. The terms "agricultural commodity",  
19 "producer", and "produce dealer" shall be defined in  
20 the same manner as they are defined in section 147-1;  
21 provided that agricultural commodities need not have  
22 been produced in the State;





- 1           (2) Amounts received from sales of:
- 2               (A) Intoxicating liquor as the term "liquor" is
- 3               defined in chapter 244D;
- 4               (B) Cigarettes and tobacco products as defined in
- 5               chapter 245; and
- 6               (C) Agricultural, meat, or fish products;
- 7           to any person or common carrier in interstate or
- 8           foreign commerce, or both, whether ocean-going or air,
- 9           for consumption out-of-state on the shipper's vessels
- 10           or airplanes;
- 11          (3) Amounts received by the manager, submanager, or board
- 12           of directors of:
- 13               (A) An association of apartment owners of a
- 14               condominium property regime established in
- 15               accordance with chapter 514A or 514B; or
- 16               (B) A nonprofit homeowners or community association
- 17               incorporated in accordance with chapter 414D or
- 18               any predecessor thereto and existing pursuant to
- 19               covenants running with the land,
- 20           in reimbursement of sums paid for common expenses;
- 21          (4) Amounts received or accrued from:



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



1 real property in this State; and provided further that  
2 gross rental income or gross rental proceeds from  
3 investments in real property received by an employee  
4 benefit plan after June 30, 1994, under written  
5 contracts executed prior to July 1, 1994, shall not be  
6 taxed until the contracts are renegotiated, renewed,  
7 or extended, or until after December 31, 1998,  
8 whichever is earlier. For the purposes of this  
9 paragraph, "employee benefit plan" means any plan as  
10 defined in section 1002(3) of title 29 of the United  
11 States Code, as amended;

12 (6) Amounts received for [purchases]:

13 (A) Purchases made with United States Department of  
14 Agriculture food coupons under the federal food stamp  
15 program~~[, and amounts received for purchases]~~;

16 (B) Purchases made with United States Department of  
17 Agriculture food vouchers under the Special  
18 Supplemental Foods Program for Women, Infants and  
19 Children;

20 (C) Purchases by any purchaser of items that qualify  
21 under the state Special Supplemental Foods Program for  
22 Women, Infants, and Children as of January 1, 2008;



1 provided that if the state Special Supplemental Foods  
2 Program for Women, Infants, and Children ceases,  
3 proceeds from purchases of the most recent qualifying  
4 items shall remain exempt amounts under this  
5 subsection; and

6 (D) Purchases by any purchaser of the following  
7 items:

8 (i) Rice, packages of up to 25 lbs.;

9 (ii) Poi, packages of up to 5 lbs.; and

10 (iii) Spam, packages of up to 1 lb.

11 (7) Amounts received by a hospital, infirmary, medical  
12 clinic, health care facility, pharmacy, or a  
13 practitioner licensed to administer the drug to an  
14 individual for selling prescription drugs or  
15 prosthetic devices to an individual; [~~provided that~~  
16 ~~this paragraph shall not apply to~~] and any amounts  
17 received for services provided in selling prescription  
18 and non-prescription drugs or prosthetic devices. As  
19 used in this paragraph:

20 "Prescription drugs" are those drugs defined  
21 under section 328-1 and dispensed by filling or  
22 refilling a written or oral prescription by a



1 practitioner licensed under law to administer the drug  
2 and sold by a licensed pharmacist under section 328-16  
3 or practitioners licensed to administer drugs; and

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

16 (8) Taxes on transient accommodations imposed by chapter  
17 237D and passed on and collected by operators holding  
18 certificates of registration under that chapter;

19 (9) Amounts received as dues by an unincorporated  
20 merchants association from its membership for  
21 advertising media, promotional, and advertising costs  
22 for the promotion of the association for the benefit



1 of its members as a whole and not for the benefit of  
2 an individual member or group of members less than the  
3 entire membership;

4 (10) Amounts received by a labor organization for real  
5 property leased to:

6 (A) A labor organization; or

7 (B) A trust fund established by a labor organization  
8 for the benefit of its members, families, and  
9 dependents for medical or hospital care, pensions  
10 on retirement or death of employees,  
11 apprenticeship and training, and other membership  
12 service programs.

13 As used in this paragraph, "labor organization" means  
14 a labor organization exempt from federal income tax  
15 under section 501(c)(5) of the Internal Revenue Code,  
16 as amended;

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

21 (12) Amounts received as rent for the rental or leasing of  
22 aircraft or aircraft engines used by the lessees or



1           renters for interstate air transportation of  
2           passengers and goods. For purposes of this paragraph,  
3           payments made pursuant to a lease shall be considered  
4           rent regardless of whether the lease is an operating  
5           lease or a financing lease. The definition of  
6           "interstate air transportation" is the same as in 49  
7           U.S.C. 40102.

8           (13) Amounts received from the rent, lease, or sale of  
9           medical equipment. As used in this paragraph:

10           (A) "Medical equipment" includes any device,  
11           instrument, appliance, apparatus or contrivance,  
12           including their components, parts, accessories, and  
13           replacements thereof, either electronic, mechanical,  
14           or otherwise that is intended for the use in the  
15           diagnosis, cure, mitigation, treatment, or prevention  
16           of disease or the protection of wellness of body; and

17           (14) Amounts received from the provision of health care or  
18           long-term care services. As used in this paragraph:

19           (A) "Health care services" means services involved in  
20           the diagnosis, cure, mitigation, treatment, or  
21           prevention of disease or the promotion of wellness of  
22           body when provided by licensed doctor, licensed



1 dentist, and entities licensed by the state to provide  
2 services described herein.

3 (B) "Long-term care services" means one or more  
4 necessary or medically necessary diagnostic,  
5 preventive, therapeutic, rehabilitative, maintenance,  
6 or personal care services provided in a setting other  
7 than an acute care unit of a hospital."

8 SECTION 4. Act 239, Session Laws of Hawaii 2007, is  
9 amended by amending section 4 to read as follows:

10 "This Act shall take effect on January 1, 2008; provided  
11 that this Act shall be repealed on December 31, 2009, [~~and~~  
12 ~~section 237-24.3, Hawaii Revised Statutes,~~] and section 237-  
13 24.7, Hawaii Revised Statutes, shall be reenacted in the form in  
14 which [~~they~~] it read on December 31, 2007. Further, section  
15 237-24.3, Hawaii Revised Statutes, shall be reenacted in the  
16 form in which it read as of December 31, 2007, as further  
17 amended by section 3 of Act , Session Laws of Hawaii 2008."

18 SECTION 5. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 6. This Act, upon its approval, shall apply to  
21 taxable years beginning after December 31, 2007.

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INTRODUCED BY:

Chuan N. L. Ching

JAN 22 2008



**Report Title:**

Taxation

**Description:**

Provides general excise tax exemptions for certain food items and medicine and medical services.

