

JAN 19 2007

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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. The legislature finds that SMG is the operator  
2 under contract with the Hawaii tourism authority to operate the  
3 Hawaii convention center. As such, the operator is paid only  
4 \$500,000 to operate and market the Hawaii convention center but  
5 recently received \$16,000,000 in advances for the costs of  
6 operating and marketing the Hawaii convention center. The  
7 department of taxation considers the reimbursement of the  
8 \$16,000,000 in costs and advances to the operator as gross  
9 income on which the general excise tax is to be levied in the  
10 amount of \$700,000 because the operator receives additional  
11 monetary consideration in the form of the \$500,000 payment. In  
12 effect, this means that \$700,000 of the costs and advances  
13 cannot be used for operating and marketing the Hawaii convention  
14 center. However, pursuant to section 201B-8(b), Hawaii Revised  
15 Statutes, the costs and advances for the operation and marketing  
16 of the Hawaii convention center is an obligation of the  
17 convention center enterprise special fund and not compensation  
18 for personal services to the operator.



1           Accordingly, the purpose of this Act is to exempt from the  
2 general excise tax amounts received by the operator of the  
3 Hawaii convention center for reimbursement of costs or advances  
4 made pursuant to contract with the Hawaii tourism authority.

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

7           "**§237-24.7 Additional amounts not taxable.** In addition to  
8 the amounts not taxable under section 237-24, this chapter shall  
9 not apply to:

10           (1) Amounts received by the operator of a hotel from the  
11 owner of the hotel in amounts equal to and which are  
12 disbursed by the operator for employee wages,  
13 salaries, payroll taxes, insurance premiums, and  
14 benefits, including retirement, vacation, sick pay,  
15 and health benefits. As used in this paragraph:

16                   "Employee" means employees directly engaged in  
17 the day-to-day operation of the hotel and employed by  
18 the operator.

19                   "Hotel" means an operation as defined in section  
20 445-90.



1           "Operator" means any person who, pursuant to a  
2 written contract with the owner of a hotel, operates  
3 or manages the hotel for the owner.

4           "Owner" means the fee owner or lessee under a  
5 recorded lease of a hotel;

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 and

17 (11) Amounts received by the operator of the Hawaii  
18 convention center for reimbursement of costs or  
19 advances made pursuant to a contract with the Hawaii  
20 tourism authority under section 201B-7."

21 SECTION 3. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.



1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Charles B. Dickerson

*Anna Merando*



**Report Title:**

General Excise Tax; Hawaii Convention Center Operation

**Description:**

Exempts from the general excise tax amounts received by the operator of the Hawaii convention center for reimbursement of costs or advances made pursuant to contract with the Hawaii tourism authority.

