

JAN 24 2007

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that taxation of
2 reimbursements for salaries, wages, and benefits between related
3 entities when they must reorganize their business structure to
4 establish an employee stock ownership plan for the benefit of
5 their employees often blocks the creation of employee stock
6 ownership plans in Hawaii. Employees in Hawaii, thus, are
7 prevented from obtaining the valuable benefits of employee stock
8 ownership plans in these cases.

9 The legislature also finds that in these cases, the
10 salaries, wages, and benefits of the employees who will benefit
11 from the establishment of the employee stock ownership plan are
12 not subject to the general excise tax before their employers
13 reorganize for the purpose of establishing employee stock
14 ownership plans. Subjecting these salaries, wages, and benefits
15 to the general excise tax after their employers reorganize in
16 order to give employees the benefit of employee stock ownership
17 plans would be inconsistent.



1 The legislature further finds that employee stock ownership
2 plans benefit the overall economy by increasing employee morale
3 and strengthening the companies that establish such plans. By
4 applying inconsistent taxation in cases where employee stock
5 ownership plans are established, the economy of Hawaii is denied
6 the advantage of this stimulus.

7 Accordingly, the purpose of this Act is to clarify that
8 reimbursements for salaries, wages, and benefits between related
9 entities that have reorganized their business structures for the
10 purpose of facilitating the establishment of employee stock
11 ownership plans are exempt from the general excise tax.

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

14 "**§237-24.7 Additional amounts not taxable.** In addition to
15 the amounts not taxable under section 237-24, this chapter shall
16 not apply to:

17 (1) Amounts received by the operator of a hotel from the
18 owner of the hotel in amounts equal to and [~~which~~]
19 that are disbursed by the operator for employee wages,
20 salaries, payroll taxes, insurance premiums, and
21 benefits, including retirement, vacation, sick pay,
22 and health benefits. As used in this paragraph:



1 "Employee" means employees directly engaged in
2 the day-to-day operation of the hotel and employed by
3 the operator.

4 "Hotel" means an operation as defined in section
5 445-90.

6 "Operator" means any person who, pursuant to a
7 written contract with the owner of a hotel, operates
8 or manages the hotel for the owner.

9 "Owner" means the fee owner or lessee under a
10 recorded lease of a hotel;

11 (2) Amounts received by the operator of a county
12 transportation system operated under an operating
13 contract with a political subdivision, where the
14 political subdivision is the owner of the county
15 transportation system. As used in this paragraph:

16 "County transportation system" means a mass
17 transit system of motorized buses providing regularly
18 scheduled transportation within a county.

19 "Operating contract" or "contract" means a
20 contract to operate and manage a political
21 subdivision's county transportation system, which
22 provides that:



1 (A) The political subdivision shall exercise
2 substantial control over all aspects of the
3 operator's operation;

4 (B) The political subdivision controls the
5 development of transit policy, service
6 planning, routes, and fares; and

7 (C) The operator develops in advance a draft
8 budget in the same format as prescribed for
9 agencies of the political subdivision. The
10 budget must be subject to the same
11 constraints and controls regarding the
12 lawful expenditure of public funds as any
13 public sector agency, and deviations from
14 the budget must be subject to approval by
15 the appropriate political subdivision
16 officials involved in the budgetary process.

17 "Operator" means any person who, pursuant to an
18 operating contract with a political subdivision,
19 operates or manages a county transportation system.

20 "Owner" means a political subdivision that owns
21 or is the lessee of all the properties and facilities
22 of the county transportation system (including buses,



1 real estate, parking garages, fuel pumps, maintenance
2 equipment, office supplies, etc.), and that owns all
3 revenues derived therefrom;

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

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

15 "Employee" means an employee directly engaged in
16 the day-to-day operations of the orchard properties
17 and employed by the operator.

18 "Operator" means a producer who, pursuant to a
19 written contract with the owner of the orchard
20 property, operates or manages the orchard property for
21 the owner where the property contains an area



1 sufficient to make the undertaking economically
2 feasible.

3 "Orchard property" means any real property that
4 is used to raise trees with a production life cycle of
5 fifteen years or more producing fruits or nuts having
6 a normal period of development from the initial
7 planting to the first commercially saleable harvest of
8 not less than three years.

9 "Owner" means a fee owner or lessee under a
10 recorded lease of orchard property;

11 (5) Taxes on nursing facility income imposed by chapter
12 346E and passed on and collected by operators of
13 nursing facilities;

14 (6) Amounts received under property and casualty insurance
15 policies for damage or loss of inventory used in the
16 conduct of a trade or business located within the
17 State or a portion thereof that is declared a natural
18 disaster area by the governor pursuant to section 209-
19 2;

20 (7) Amounts received as compensation by community
21 organizations, school booster clubs, and nonprofit
22 organizations under a contract with the chief election



1 officer for the provision and compensation of precinct
2 officials and other election-related personnel,
3 services, and activities, pursuant to section 11-5;

4 (8) Interest received by a person domiciled outside the
5 State from a trust company (as defined in section
6 412:8-101) acting as payment agent or trustee on
7 behalf of the issuer or payees of an interest bearing
8 instrument or obligation, if the interest would not
9 have been subject to tax under this chapter if paid
10 directly to the person domiciled outside the State
11 without the use of a paying agent or trustee; provided
12 that if the interest would otherwise be taxable under
13 this chapter if paid directly to the person domiciled
14 outside the State, it shall not be exempt solely
15 because of the use of a Hawaii trust company as a
16 paying agent or trustee;

17 (9) Amounts received by a management company from related
18 entities engaged in the business of selling interstate
19 or foreign common carrier telecommunications services
20 or providing medical services in amounts equal to and
21 ~~which~~ that are disbursed by the management company
22 for employee wages, salaries, payroll taxes, insurance



1 premiums, and benefits, including retirement,
2 vacation, sick pay, and health benefits. As used in
3 this paragraph:

4 "Employee" means employees directly engaged in
5 the day-to-day operation of related entities engaged
6 in the business of selling interstate or foreign
7 common carrier telecommunications services or
8 providing medical services and employed by the
9 management company.

10 "Management company" means any person who,
11 pursuant to a written contract with a related entity
12 engaged in the business of selling interstate or
13 foreign common carrier telecommunications services [7]
14 or providing medical services, provides managerial or
15 operational services to that entity.

16 "Related entities" means:

17 (A) An affiliated group of corporations within
18 the meaning of section 1504 (with respect to
19 affiliated group defined) of the federal
20 Internal Revenue Code of 1986, as amended;

21 (B) A controlled group of corporations within
22 the meaning of section 1563 (with respect to



1 definitions and special rules) of the
2 federal Internal Revenue Code of 1986, as
3 amended;

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

13 (D) Any group or combination of the entities
14 described in paragraph (C) constituting a
15 unitary business for income tax purposes;
16 and

17 (E) A management company and those entities to
18 which the management company provides
19 managerial or operational services pursuant
20 to a written contract if the management
21 company is owned in whole or in part by, or



1 through distributions from, an employee
2 stock ownership benefit plan trust;
3 whether or not the entity is located within or without
4 the State or licensed under this chapter; and
5 (10) Amounts received as grants under section 206M-15."

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on July 1, 2007, and
9 shall apply to gross income or gross proceeds received after
10 June 30, 2007.

11

INTRODUCED BY: A.S.T.H.
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Report Title:

Taxation; Employee Stock Ownership Plans

Description:

Creates an exemption from the general excise tax for a management company that contracts to provide managerial and operational services to related companies that engage in the provision of medical services in order to facilitate the creation of an employee stock ownership plan.

