

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

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

- 6 (1) Public service companies (as that term is defined in
7 section 239-2), with respect to the gross income,
8 either actual gross income or gross income estimated
9 and adjusted, which is included in the measure of the
10 tax imposed by chapter 239;
- 11 (2) Public utilities owned and operated by the State or
12 any county or other political subdivision thereof;
- 13 (3) Fraternal benefit societies, orders, or associations,
14 operating under the lodge system, or for the exclusive
15 benefit of the members of the fraternity itself,
16 operating under the lodge system, and providing for
17 the payment of death, sick, accident, prepaid legal



1 services, or other benefits to the members of such
2 societies, orders, or associations, and to their
3 dependents;

4 (4) Corporations, associations, trusts, or societies
5 organized and operated exclusively for religious,
6 charitable, scientific, or educational purposes, as
7 well as that of operating senior citizens housing
8 facilities qualifying for a loan under the laws of the
9 United States as authorized by section 202 of the
10 Housing Act of 1959, as amended, as well as that of
11 operating a prepaid legal services plan, as well as
12 that of operating or managing a homeless facility, or
13 any other program for the homeless authorized under
14 chapter 201G, part IV;

15 (5) Business leagues, chambers of commerce, boards of
16 trade, civic leagues, agricultural and horticultural
17 organizations, and organizations operated exclusively
18 for the benefit of the community and for the promotion
19 of social welfare which shall include the operation of
20 a prepaid legal service plan, and from which no profit
21 inures to the benefit of any private stockholder or
22 individual;



1 (6) Hospitals, infirmaries, [~~and sanitarium,~~] skilled
2 nursing facilities, intermediate care facilities,
3 adult residential care homes, adult foster homes,
4 adult day care facilities, assisted living facilities,
5 and sanitarium;

6 (7) Cooperative associations incorporated under chapter
7 421 or Code section 521 cooperatives which fully meet
8 the requirements of section 421-23, except Code
9 section 521 cooperatives need not be organized in
10 Hawaii; provided that:

11 (A) The exemption shall apply only to the gross
12 income derived from activities which are pursuant
13 to purposes and powers authorized by chapter 421,
14 except those provisions pertaining to or
15 requiring corporate organization in Hawaii do not
16 apply to Code section 521 cooperatives;

17 (B) The exemption shall not relieve any person who
18 receives any proceeds of sale from the
19 association of the duty of returning and paying
20 the tax on the total gross proceeds of the sales
21 on account of which the payment was made, in the
22 same amount and at the same rate as would apply



1 thereto had the sales been made directly by the
2 person, and all such persons shall be so taxable;
3 and

4 (C) As used in this paragraph, "section 521
5 cooperatives" mean associations which qualify as
6 a cooperative under section 521 (with respect to
7 exemption of farmers' cooperatives from tax) of
8 the Internal Revenue Code of 1986, as amended;

9 (8) Persons affected with Hansen's disease and kokuas,
10 with respect to business within the county of Kalawao;

11 (9) Corporations, companies, associations, or trusts
12 organized for the establishment and conduct of
13 cemeteries no part of the net earnings of which inures
14 to the financial benefit of any private stockholder or
15 individual (provided that the exemption shall apply
16 only to the activities of such persons in the conduct
17 of cemeteries and not to any activity the primary
18 purpose of which is to produce income, even though the
19 income is to be used for or in the furtherance of the
20 exempt activities of such persons); and



1 (10) Nonprofit shippers associations operating under part
2 296 of the Civil Aeronautics Board Economic
3 Regulations.

4 (b) The exemptions enumerated in subsection (a)(3) to
5 ~~[(6)]~~ (5) shall apply only:

6 (1) To those persons who shall have registered with the
7 department of taxation by filing a written application
8 for registration in such form as the department shall
9 prescribe, shall have paid the registration fee of
10 \$20, and shall have had the exemption allowed by the
11 department or by a court or tribunal of competent
12 jurisdiction upon appeal from any assessment resulting
13 from disallowance of the exemption by the department;

14 (2) To activities from which no profit inures to the
15 benefit of any private stockholder or individual,
16 except for death or other benefits to the members of
17 fraternal societies; and

18 (3) To the fraternal, religious, charitable, scientific,
19 educational, communal, or social welfare activities of
20 such persons [~~, or to the activities of such hospitals,~~
21 ~~infirmaries, and sanitarium as such], and not to any~~
22 activity the primary purpose of which is to produce



1 income even though the income is to be used for or in
2 furtherance of the exempt activities of such persons.

3 (c) To obtain allowance of an exemption:

- 4 (1) A person under subsection (a) (3) to [~~4~~] (5), who has
5 received or applied for recognition of tax exempt
6 status under section 501(c) (3), (4), (6), or (8) of
7 the Internal Revenue Code of 1986, as amended, or who
8 is a subordinate person of a person who has received a
9 group exemption letter under section 501(c) (3), (4),
10 (6), or (8) of the Internal Revenue Code of 1986, as
11 amended, shall register with the department by filing
12 a statement attaching a copy of the exemption or
13 application for recognition of exempt status and any
14 particular facts that the department may require; and
- 15 (2) All other persons under subsection (a) (3) to [~~4~~] (5)
16 shall file an application for exemption in the form of
17 an affidavit or affidavits setting forth in general
18 all facts affecting the right to the exemption and
19 such particular facts as the department may require,
20 to which shall be attached such records, papers, and
21 other information as the department may prescribe.



1 (d) For all persons, the statement registering the person
2 with the department or application for exemption shall be filed
3 on or before March 31 of the first year of registration or
4 within three months after the commencement of business. In the
5 event of allowance of the exemption, no further statement or
6 application therefor need be filed unless there is a material
7 change in the facts. In the event of disallowance of the
8 exemption, a license may be obtained upon payment of the
9 required fee as provided by section 237-9, less the \$20 already
10 paid under this section, which shall be credited thereon. In
11 the event the registrant has a license under this chapter, no
12 further fee shall be required for registration under this
13 section.

14 (e) The department for good cause may extend the time for
15 registration or the time for filing an application for
16 exemption."

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

19 "**§237-24.3 Additional amounts not taxable.** In addition to
20 the amounts not taxable under section 237-24, this chapter shall
21 not apply to:



- 1 (1) Amounts received from the loading, transportation, and
2 unloading of agricultural commodities shipped for a
3 producer or produce dealer on one island of this State
4 to a person, firm, or organization on another island
5 of this State. The terms "agricultural commodity",
6 "producer", and "produce dealer" shall be defined in
7 the same manner as they are defined in section 147-1;
8 provided that agricultural commodities need not have
9 been produced in the State;
- 10 (2) Amounts received from sales of:
- 11 (A) Intoxicating liquor as the term "liquor" is
12 defined in chapter 244D;
- 13 (B) Cigarettes and tobacco products as defined in
14 chapter 245; and
- 15 (C) Agricultural, meat, or fish products;
- 16 to any person or common carrier in interstate or
17 foreign commerce, or both, whether ocean-going or air,
18 for consumption out-of-state on the shipper's vessels
19 or airplanes;
- 20 (3) *[Paragraph effective until June 30, 2006. For*
21 *paragraph effective July 1, 2006, see below.]*



1 Amounts received by the manager or board of directors
2 of:

3 (A) An association of apartment owners of a
4 condominium property regime established in
5 accordance with chapter 514A; or

6 (B) A nonprofit homeowners or community association
7 incorporated in accordance with chapter 414D or
8 any predecessor thereto and existing pursuant to
9 covenants running with the land,

10 in reimbursement of sums paid for common expenses;

11 (3) *[Paragraph effective July 1, 2006. For paragraph*
12 *effective until June 30, 2006, see above.]* Amounts
13 received by the manager or board of directors of:

14 (A) An association of apartment owners of a
15 condominium property regime established in
16 accordance with chapter 514B; or

17 (B) A nonprofit homeowners or community association
18 incorporated in accordance with chapter 414D or
19 any predecessor thereto and existing pursuant to
20 covenants running with the land,

21 in reimbursement of sums paid for common expenses;

22 (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 made with United States
13 Department of Agriculture food coupons under the
14 federal food stamp program, and amounts received for
15 purchases made with United States Department of
16 Agriculture food vouchers under the Special
17 Supplemental Foods Program for Women, Infants and
18 Children;

19 (7) Amounts received by a hospital, infirmary, medical
20 clinic, health care facility, pharmacy, or a
21 practitioner licensed to administer the drug to an
22 individual for selling prescription drugs or



1 prosthetic devices to an individual; [~~provided that~~
2 ~~this paragraph shall not apply to~~] any amounts
3 received for services provided in selling prescription
4 and non-prescription drugs or prosthetic devices. As
5 used in this paragraph:

6 (A) "Prescription drugs" are those drugs defined
7 under section 328-1 and dispensed by filling or
8 refilling a written or oral prescription by a
9 practitioner licensed under law to administer the
10 drug and sold by a licensed pharmacist under
11 section 328-16 or practitioners licensed to
12 administer drugs; and

13 (B) "Prosthetic device" means any artificial device
14 or appliance, instrument, apparatus, or
15 contrivance, including their components, parts,
16 accessories, and replacements thereof, used to
17 replace a missing or surgically removed part of
18 the human body, which is prescribed by a licensed
19 practitioner of medicine, osteopathy, or podiatry
20 and which is sold by the practitioner or which is
21 dispensed and sold by a dealer of prosthetic
22 devices; provided that "prosthetic device" shall



1 not mean any auditory, ophthalmic, dental, or
2 ocular device or appliance, instrument,
3 apparatus, or contrivance;

4 (8) Taxes on transient accommodations imposed by chapter
5 237D and passed on and collected by operators holding
6 certificates of registration under that chapter;

7 (9) Amounts received as dues by an unincorporated
8 merchants association from its membership for
9 advertising media, promotional, and advertising costs
10 for the promotion of the association for the benefit
11 of its members as a whole and not for the benefit of
12 an individual member or group of members less than the
13 entire membership;

14 (10) Amounts received by a labor organization for real
15 property leased to:

16 (A) A labor organization; or

17 (B) A trust fund established by a labor organization
18 for the benefit of its members, families, and
19 dependents for medical or hospital care, pensions
20 on retirement or death of employees,
21 apprenticeship and training, and other membership
22 service programs.



1 As used in this paragraph, "labor organization" means
2 a labor organization exempt from federal income tax
3 under section 501(c)(5) of the Internal Revenue Code,
4 as amended;

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

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

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

20 (A) "Medical equipment" includes any device,
21 instrument, appliance, apparatus or contrivance,
22 including their components, parts, accessories, and



1 replacements thereof, either electronic, mechanical,
2 or otherwise that is intended for the use in the
3 diagnosis, cure, mitigation, treatment, or prevention
4 of disease or the protection of wellness of body; and

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

7 (A) "Health care services" means services involved in
8 the diagnosis, cure, mitigation, treatment, or
9 prevention of disease or the promotion of wellness of
10 body when provided by licensed doctor, licensed
11 dentist, and entities licensed by the state to provide
12 services described herein.

13 (B) "Long-term care services" means one or more
14 necessary or medically necessary diagnostic,
15 preventive, therapeutic, rehabilitative, maintenance,
16 or personal care services provided in a setting other
17 than an acute care unit of a hospital."

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 4. This Act shall take effect on July 1, 2006; and
21 shall apply to taxable years beginning after December 31, 2006.

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INTRODUCED BY:

Suchmaning
Salu
Subyottel.
Sumudu Sen



Report Title:

Taxation

Description:

Exempts medical care services, long-term care services, and non-prescription drugs from general excise tax liability.

