

JAN 23 2008

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 whatever the form of
2 mass transit adopted by the city and county of Honolulu, it will
3 have an impact reaching far beyond transportation issues alone.
4 Development of a new transportation system gives the State and
5 the city and county of Honolulu the opportunity to maximize
6 affordable housing facilities, and add to and improve eldercare
7 and related public functions as mass transit development is
8 planned between west Oahu and the University of Hawaii at Manoa.

9 The legislature further finds that in areas with a
10 higher-than-average senior citizen population, which also lack
11 adequate long-term care facilities, there is an opportunity to
12 meet the objective of "aging-in-place" through creative
13 distribution of services; for example, aggregating services
14 among condominium building residents in close proximity to one
15 another, etc.

16 In areas with limited recreational spaces and facilities
17 for young people, public, private, and non-profit partnerships



1 can stimulate development of additional services, programs, and
2 facilities to serve at-risk youth, families with special needs,
3 and others, in a school, park, or church setting.

4 The purpose of this Act is to provide the means for the
5 State and the city and county of Honolulu to meet the needs for
6 affordable housing, eldercare, and services to Hawaii's
7 disadvantaged, which will be available as a result of mixed use
8 transit oriented joint development project opportunities.

9 SECTION 2. Section 46-15.1, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Any law to the contrary notwithstanding, any county
12 shall have and may exercise the same powers, subject to
13 applicable limitations, as those granted the Hawaii housing
14 finance and development corporation pursuant to chapter 201H
15 insofar as those powers may be reasonably construed to be
16 exercisable by a county for the purpose of developing,
17 constructing, and providing low- and moderate-income housing;
18 provided that no county shall be empowered to cause the State to
19 issue general obligation bonds to finance a project pursuant to
20 this section; provided further that county projects shall be
21 granted an exemption from general excise or receipts taxes in
22 the same manner as projects of the Hawaii housing finance and



1 development corporation pursuant to section 201H-36[+], except
2 that no county shall be empowered to grant an exemption for a
3 mixed use transit oriented joint development project as defined
4 in section 201H-36(c); and provided further that section 201H-16
5 shall not apply to this section unless federal guidelines
6 specifically provide local governments with that authorization
7 and the authorization does not conflict with any state laws.
8 The powers shall include the power, subject to applicable
9 limitations, to:

- 10 (1) Develop and construct dwelling units, alone or in
11 partnership with developers;
- 12 (2) Acquire necessary land by lease, purchase, exchange,
13 or eminent domain;
- 14 (3) Provide assistance and aid to a public agency or other
15 person in developing and constructing new housing and
16 rehabilitating existing housing for elders of low- and
17 moderate-income, other persons of low- and moderate-
18 income, and persons displaced by any governmental
19 action, by making long-term mortgage or interim
20 construction loans available;



- 1 (4) Contract with any eligible bidders to provide for
2 construction of urgently needed housing for persons of
3 low- and moderate-income;
- 4 (5) Guarantee the top twenty-five per cent of the
5 principal balance of real property mortgage loans,
6 plus interest thereon, made to qualified borrowers by
7 qualified lenders;
- 8 (6) Enter into mortgage guarantee agreements with
9 appropriate officials of any agency or instrumentality
10 of the United States to induce those officials to
11 commit to insure or to insure mortgages under the
12 National Housing Act, as amended;
- 13 (7) Make a direct loan to any qualified buyer for the
14 downpayment required by a private lender to be made by
15 the borrower as a condition of obtaining a loan from
16 the private lender in the purchase of residential
17 property;
- 18 (8) Provide funds for a share, not to exceed fifty per
19 cent, of the principal amount of a loan made to a
20 qualified borrower by a private lender who is unable
21 otherwise to lend the borrower sufficient funds at



1 reasonable rates in the purchase of residential
2 property; and

3 (9) Sell or lease completed dwelling units.

4 For purposes of this section, a limitation is applicable to
5 the extent that it may reasonably be construed to apply to a
6 county."

7 SECTION 3. Section 201H-36, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~§~~201H-36~~§~~ **Exemption from general excise taxes.** (a)

10 In accordance with section 237-29, the corporation may approve
11 and certify for exemption from general excise taxes any
12 qualified person or firm involved with a newly constructed, or
13 moderately or substantially rehabilitated project:

14 (1) Developed under this part;

15 (2) Developed under a government assistance program
16 approved by the corporation, including but not limited
17 to the United States Department of Agriculture 502
18 program and Federal Housing Administration 235
19 program;

20 (3) Developed under the sponsorship of a private nonprofit
21 organization providing home rehabilitation or new



1 homes for qualified families in need of decent, low-
2 cost housing; [~~or~~]

3 (4) Developed by a qualified person or firm to provide
4 affordable rental housing where at least fifty per
5 cent of the available units are for households with
6 incomes at or below eighty per cent of the area median
7 family income as determined by the United States
8 Department of Housing and Urban Development, of which
9 at least twenty per cent of the available units are
10 for households with incomes at or below sixty per cent
11 of the area median family income as determined by the
12 United States Department of Housing and Urban
13 Development[~~-~~];

14 (5) Developed by a qualified person or firm to provide
15 affordable rental housing units within a mixed use
16 transit oriented joint development project where at
17 least:

18 (A) _____ per cent of the eligible development costs
19 are expended for rental housing units; and

20 (B) _____ per cent of the available rental housing
21 units are for households with incomes at or below
22 eighty per cent of the area median family income



1 as determined by the United States Department of
2 Housing and Urban Development, of which at least
3 per cent of the available rental housing
4 units are for households with incomes at or below
5 sixty per cent of the area median family income
6 as determined by the United States Department of
7 Housing and Urban Development; or

8 (6) Developed by a qualified person or firm to provide a
9 community health care facility within a mixed use
10 transit oriented joint development project approved by
11 the corporation.

12 (b) All claims for exemption under this section shall be
13 filed with and certified by the corporation and forwarded to the
14 department of taxation. Any claim for exemption that is filed
15 and approved, shall not be considered a subsidy for the purpose
16 of this part.

17 (c) For the purposes of this section:

18 "Community health care facility" means a health care
19 facility as defined in section 323D-2, which is leased or sold
20 to a person who is or who is controlled by:

21 (1) A person who has received recognition of tax exempt
22 status or who is a subordinate person of a person who



1 has received a group exemption letter under section
2 501(c)(3) of the Internal Revenue Code of 1986, as
3 amended;

4 (2) The State;

5 (3) Any political subdivision of the State;

6 (4) A county;

7 (5) A state agency or any instrumentality of the State; or

8 (6) A county agency or any instrumentality of a county.

9 "Eligible development costs" means amounts incurred by a
10 developer or a contractor for contracting, services, and
11 materials that are used for the planning, development, and
12 construction of a project approved and certified by the
13 corporation.

14 "Mixed use transit oriented joint development project"
15 means a transit oriented joint development project that:

16 (1) Combines residential development with any combination
17 of commercial and industrial development, including
18 the development of community health care facilities;
19 and

20 (2) Is approved as a whole or in part as a transit
21 oriented joint development project by the United



1 States Department of Transportation Federal Transit
2 Administration.

3 "Moderate rehabilitation" means rehabilitation to upgrade a
4 dwelling unit to a decent, safe, and sanitary condition, or to
5 repair or replace major building systems or components in danger
6 of failure.

7 "Substantial rehabilitation":

8 (1) Means the improvement of a property to a decent, safe,
9 and sanitary condition that requires more than routine
10 or minor repairs or improvements. It may include but
11 is not limited to the gutting and extensive
12 reconstruction of a dwelling unit, or cosmetic
13 improvements coupled with the curing of a substantial
14 accumulation of deferred maintenance; and

15 (2) Includes renovation, alteration, or remodeling to
16 convert or adapt structurally sound property to the
17 design and condition required for a specific use, such
18 as conversion of a hotel to housing for elders.

19 (d) The corporation may establish, revise, charge, and
20 collect a reasonable service fee, as necessary, in connection
21 with its approvals and certifications under this section. The
22 fees shall be deposited into the dwelling unit revolving fund."



1 SECTION 4. Section 237-24.7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§237-24.7 Additional amounts not taxable.** In addition to
4 the amounts not taxable under section 237-24, this chapter shall
5 not apply to:

6 (1) Amounts received by the operator of a hotel from the
7 owner of the hotel or from a time share association,
8 and amounts received by the suboperator of a hotel
9 from the owner of the hotel, from a time share
10 association, or from the operator of the hotel, in
11 amounts equal to and which are disbursed by the
12 operator or suboperator for employee wages, salaries,
13 payroll taxes, insurance premiums, and benefits,
14 including retirement, vacation, sick pay, and health
15 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 or suboperator.

19 "Hotel" means an operation as defined in section
20 445-90 or a time share plan as defined in section
21 514E-1.



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

5 "Owner" means the fee owner or lessee under a
6 recorded lease of a hotel.

7 "Suboperator" means any person who, pursuant to a
8 written contract with the operator, operates or
9 manages the hotel as a subcontractor of the operator.

10 "Time share association" means an "association"
11 as that term is defined in section 514E-1;

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

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

20 "Operating contract" or "contract" means a
21 contract to operate and manage a political



1 subdivision's county bus transportation system, which
2 provides that:

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

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

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

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



1 "Owner" means a political subdivision that owns
2 or is the lessee of all the properties and facilities
3 of the county bus transportation system (including
4 buses, real estate, parking garages, fuel pumps,
5 maintenance equipment, office supplies, etc.), and
6 that owns all revenues derived therefrom;

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

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

18 "Employee" means an employee directly engaged in
19 the day-to-day operations of the orchard properties
20 and employed by the operator.

21 "Operator" means a producer who, pursuant to a
22 written contract with the owner of the orchard



1 property, operates or manages the orchard property for
2 the owner where the property contains an area
3 sufficient to make the undertaking economically
4 feasible.

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

11 "Owner" means a fee owner or lessee under a
12 recorded lease of orchard property;

13 (5) Taxes on nursing facility income imposed by chapter
14 346E and passed on and collected by operators of
15 nursing facilities;

16 (6) Amounts received under property and casualty insurance
17 policies for damage or loss of inventory used in the
18 conduct of a trade or business located within the
19 State or a portion thereof that is declared a natural
20 disaster area by the governor pursuant to section
21 209-2;



- 1 (7) Amounts received as compensation by community
2 organizations, school booster clubs, and nonprofit
3 organizations under a contract with the chief election
4 officer for the provision and compensation of precinct
5 officials and other election-related personnel,
6 services, and activities, pursuant to section 11-5;
- 7 (8) Interest received by a person domiciled outside the
8 State from a trust company (as defined in section
9 412:8-101) acting as payment agent or trustee on
10 behalf of the issuer or payees of an interest bearing
11 instrument or obligation, if the interest would not
12 have been subject to tax under this chapter if paid
13 directly to the person domiciled outside the State
14 without the use of a paying agent or trustee; provided
15 that if the interest would otherwise be taxable under
16 this chapter if paid directly to the person domiciled
17 outside the State, it shall not be exempt solely
18 because of the use of a Hawaii trust company as a
19 paying agent or trustee;
- 20 (9) Amounts received by a management company from related
21 entities engaged in the business of selling interstate
22 or foreign common carrier telecommunications services



1 in amounts equal to and which are disbursed by the
2 management company for employee wages, salaries,
3 payroll taxes, insurance premiums, and benefits,
4 including retirement, vacation, sick pay, and health
5 benefits. As used in this paragraph:

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

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

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



1 (B) A controlled group of corporations within
2 the meaning of section 1563 (with respect to
3 definitions and special rules) of the
4 federal Internal Revenue Code of 1986, as
5 amended;

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

15 (D) Any group or combination of the entities
16 described in paragraph (C) constituting a
17 unitary business for income tax purposes;
18 whether or not the entity is located within or without
19 the State or licensed under this chapter; and

20 (10) Amounts received as grants under section 206M-15."

21 SECTION 5. Section 237-24.75, Hawaii Revised Statutes, is
22 amended to read as follows:



1 **"§237-24.75 Additional exemptions.** In addition to the
2 amounts exempt under section 237-24, this chapter shall not
3 apply to:

4 (1) Amounts received as a beverage container deposit
5 collected under chapter 342G, part VIII;

6 (2) Amounts received by the operator of the Hawaii
7 convention center for reimbursement of costs or
8 advances made pursuant to a contract with the Hawaii
9 tourism authority under section 201B-7[+]; [~~and~~

10 +] (3) Amounts received[+] by a professional employment
11 organization from a client company equal to amounts
12 that are disbursed by the professional employment
13 organization for employee wages, salaries, payroll
14 taxes, insurance premiums, and benefits, including
15 retirement, vacation, sick leave, health benefits, and
16 similar employment benefits with respect to assigned
17 employees at a client company; provided that this
18 exemption shall not apply to a professional employment
19 organization upon failure of the professional
20 employment organization to collect, account for, and
21 pay over any income tax withholding for assigned
22 employees or any federal or state taxes for which the



1 professional employment organization is responsible.
2 As used in this paragraph, "professional employment
3 organization", "client company", and "assigned
4 employee" shall have the meanings provided in section
5 373K-1[-]; and

6 (4) Amounts received by the operator of a county fixed
7 guideway transportation system operated under an
8 operating contract with a county or political
9 subdivision, where the county or the political
10 subdivision is the owner of the county fixed guideway
11 transportation system. As used in this paragraph:

12 "County fixed guideway transportation system"
13 means a fixed guideway mass transit system providing
14 regularly scheduled transportation within a county.

15 "Operating contract" or "contract" means a
16 contract to operate and manage a county or political
17 subdivision's county fixed guideway transportation
18 system, which provides that:

19 (A) The county or political subdivision shall
20 exercise substantial control over all aspects of
21 the operator's operation;



1 (B) The county or political subdivision controls the
2 development of transit policy, service planning,
3 routes, and fares; and

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

14 "Operator" means any person who, pursuant to an
15 operating contract with a county or political
16 subdivision, operates or manages a county fixed
17 guideway transportation system.

18 "Owner" means a county or a political subdivision
19 that owns or is the lessee of all the properties and
20 facilities of the county fixed guideway transportation
21 system (including transportation equipment, real
22 estate, maintenance facilities and equipment, office



1 supplies, etc.), and that owns all revenues derived
2 therefrom."

3 SECTION 6. Section 237-29, Hawaii Revised Statutes, is
4 amended by amending its title and subsection (a) to read as
5 follows:

6 **"§237-29 Exemptions for certified or approved housing or**
7 **community health care facility projects.** (a) All gross income
8 received by any qualified person or firm for the planning,
9 design, financing, construction, sale, or lease in the State of
10 a housing or community health care facility project that has
11 been certified or approved under section 201H-36 shall be exempt
12 from general excise taxes."

13 SECTION 7. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 8. This Act, upon its approval, shall apply to
16 taxable years beginning after December 31, 2007; provided that
17 when section 237-24.7, Hawaii Revised Statutes, is repealed and
18 reenacted pursuant to Act 239, Session Laws of Hawaii 2007, the
19 amendments made to that section by this Act shall not be
20 repealed.

21

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Report Title:

Taxation; County Authority; GET Exemptions; Fixed Guideway
Transportation System; Affordable Rental Housing; Community
Health Care Facility

Description:

Specifies that a county shall not grant an exemption from GET or receipt taxes for a mixed use transit oriented joint development project; exempts from GET a project developed to provide affordable rental housing or a community health care facility within a mixed use transit oriented joint development project; exempts from GET amounts received by the operator of a county fixed guideway transportation system operated under an operating contract with a county or political subdivision.

