

JAN 23 2009

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 by amending subsection (a) to read as follows:

3 "(a) This chapter shall not apply to the following
4 persons:

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



- 1 societies, orders, or associations, and to their
2 dependents;
- 3 (4) Corporations, associations, trusts, or societies
4 organized and operated exclusively for religious,
5 charitable, scientific, or educational purposes, as
6 well as that of operating senior citizens housing
7 facilities qualifying for a loan under the laws of the
8 United States as authorized by section 202 of the
9 Housing Act of 1959, as amended, as well as that of
10 operating a prepaid legal services plan, as well as
11 that of operating or managing a homeless facility, or
12 any other program for the homeless authorized under
13 part VII of chapter 356D;
- 14 (5) Business leagues, chambers of commerce, boards of
15 trade, civic leagues, agricultural and horticultural
16 organizations, and organizations operated exclusively
17 for the benefit of the community and for the promotion
18 of social welfare that shall include the operation of
19 a prepaid legal service plan, and from which no profit
20 inures to the benefit of any private stockholder or
21 individual;
- 22 (6) Hospitals, infirmaries, and sanitararia;



1 (7) Cooperative associations incorporated under chapter
2 421 or Code section 521 cooperatives which fully meet
3 the requirements of section 421-23, except Code
4 section 521 cooperatives need not be organized in
5 Hawaii; provided that:

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

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

21 (C) As used in this paragraph, "Code section 521
22 cooperatives" mean associations that qualify as a



1 cooperative under section 521 (with respect to
2 exemption of farmers' cooperatives from tax) of
3 the Internal Revenue Code of 1986, as amended;

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

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

16 [and]

17 (10) Nonprofit shippers associations operating under part
18 296 of the Civil Aeronautics Board Economic
19 Regulations[-]; and

20 (11) Physicians or osteopathic physicians licensed under
21 chapter 453 whose principal place of business is



1 located in a county with a population of less than
2 five hundred thousand."

3 SECTION 2. Section 383-7, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) "Employment" shall not include:

6 (1) Agricultural labor as defined in section 383-9 if it
7 is performed by an individual who is employed by an
8 employing unit:

9 (A) That, during each calendar quarter in both the
10 current and the preceding calendar years, paid
11 less than \$20,000 in cash remuneration to
12 individuals employed in agricultural labor,
13 including labor performed by an alien referred to
14 in subparagraph (C); and

15 (B) That had, in each of the current and the
16 preceding calendar years:

17 (i) No more than nineteen calendar weeks,
18 whether consecutive or not, in which
19 agricultural labor was performed by its
20 employees, including labor performed by an
21 alien referred to in subparagraph (C); or



1 (ii) No more than nine individuals in its employ
2 performing agricultural labor in any one
3 calendar week, whether or not the same
4 individuals performed the labor in each
5 week, including labor performed by an alien
6 referred to in subparagraph (C); or

7 (C) If such agricultural labor is performed by an
8 individual who is an alien admitted to the United
9 States to perform agricultural labor pursuant to
10 Sections 214(c) and 101(a)(15)(H) of the
11 Immigration and Nationality Act;

12 (2) Domestic service in a private home, local college
13 club, or local chapter of a college fraternity or
14 sorority as set forth in section 3306(c)(2) of the
15 Internal Revenue Code of 1986, as amended;

16 (3) Service not in the course of the employing unit's
17 trade or business performed in any calendar quarter by
18 an individual, unless the cash remuneration paid for
19 the service is \$50 or more and the service is
20 performed by an individual who is regularly employed
21 by the employing unit to perform the service. For the
22 purposes of this paragraph, an individual shall be

1 deemed to be regularly employed to perform service not
2 in the course of an employing unit's trade or business
3 during a calendar quarter if:

4 (A) On each of some twenty-four days during the
5 quarter the individual performs the service for
6 some portion of the day; or

7 (B) The individual was regularly employed as
8 determined under subparagraph (A) by the
9 employing unit in the performance of the service
10 during the preceding calendar quarter;

11 (4) (A) Service performed on or in connection with a
12 vessel not an American vessel, if the individual
13 performing the service is employed on and in
14 connection with the vessel when outside the
15 United States;

16 (B) Service performed by an individual in (or as an
17 officer or member of the crew of a vessel while
18 it is engaged in) the catching, taking,
19 harvesting, cultivating, or farming of any kind
20 of fish, shellfish, crustacea, sponges, seaweeds,
21 or other aquatic forms of animal and vegetable



1 life, including service performed as an ordinary
2 incident thereto, except:

3 (i) The service performed in connection with a
4 vessel of more than ten net tons (determined
5 in the manner provided for determining the
6 register tonnage of merchant vessels under
7 the laws of the United States);

8 (ii) The service performed in connection with a
9 vessel of ten net tons or less (determined
10 in the manner provided for determining the
11 register tonnage of merchant vessels under
12 the laws of the United States) by an
13 individual who is employed by an employing
14 unit which had in its employ one or more
15 individuals performing the service for some
16 portion of a day in each of twenty calendar
17 weeks all occurring, whether consecutive or
18 not, in either the current or the preceding
19 calendar year; and

20 (iii) Service performed in connection with the
21 catching or taking of salmon or halibut for
22 commercial purposes;



1 (5) Service performed by an individual in the employ of
2 the individual's son, daughter, or spouse, and service
3 performed by a child under the age of twenty-one in
4 the employ of the child's father or mother;

5 (6) Service performed in the employ of the United States
6 government or an instrumentality of the United States
7 exempt under the Constitution of the United States
8 from the contributions imposed by this chapter, except
9 that to the extent that the Congress of the United
10 States permits states to require any instrumentalities
11 of the United States to make payments into an
12 unemployment fund under a state unemployment
13 compensation law, all of the provisions of this
14 chapter shall apply to those instrumentalities, and to
15 services performed for those instrumentalities, in the
16 same manner, to the same extent, and on the same terms
17 as to all other employers, employing units,
18 individuals, and services; provided that if this State
19 is not certified for any year by the Secretary of
20 Labor under section 3304(c) of the federal Internal
21 Revenue Code, the payments required of those
22 instrumentalities with respect to that year shall be



1 refunded by the department of labor and industrial
2 relations from the fund in the same manner and within
3 the same period as is provided in section 383-76 with
4 respect to contributions erroneously collected;

5 (7) Service performed in the employ of any other state, or
6 any political subdivision thereof, or any
7 instrumentality of any one or more of the foregoing
8 which is wholly owned by one or more states or
9 political subdivisions; and any service performed in
10 the employ of any instrumentality of one or more other
11 states or their political subdivisions to the extent
12 that the instrumentality is, with respect to the
13 service, exempt from the tax imposed by section 3301
14 of the Internal Revenue Code of 1986, as amended;

15 (8) Service with respect to which unemployment
16 compensation is payable under an unemployment system
17 established by an act of Congress;

18 (9) (A) Service performed in any calendar quarter in the
19 employ of any organization exempt from income tax
20 under section 501(a) of the federal Internal
21 Revenue Code (other than an organization



1 described in section 401(a) or under section 521
2 of the Internal Revenue Code), if:

3 (i) The remuneration for the service is less
4 than \$50; or

5 (ii) The service is performed by a fully
6 ordained, commissioned, or licensed minister
7 of a church in the exercise of the
8 minister's ministry or by a member of a
9 religious order in the exercise of duties
10 required by the order;

11 (B) Service performed in the employ of a school,
12 college, or university, if the service is
13 performed by a student who is enrolled and is
14 regularly attending classes at the school,
15 college, or university; or

16 (C) Service performed by an individual who is
17 enrolled at a nonprofit or public educational
18 institution which normally maintains a regular
19 faculty and curriculum and normally has a
20 regularly organized body of students in
21 attendance at the place where its educational
22 activities are carried on as a student in a full-



1 time program, taken for credit at the
2 institution, which combines academic instruction
3 with work experience, if the service is an
4 integral part of such program, and the
5 institution has so certified to the employer,
6 except that this subparagraph shall not apply to
7 service performed in a program established for or
8 on behalf of an employer or group of employers;

9 (10) Service performed in the employ of a foreign
10 government, including service as a consular or other
11 officer or employee of a nondiplomatic representative;

12 (11) Service performed in the employ of an instrumentality
13 wholly owned by a foreign government:

14 (A) If the service is of a character similar to that
15 performed in foreign countries by employees of
16 the United States government or of an
17 instrumentality thereof; and

18 (B) If the United States Secretary of State has
19 certified or certifies to the United States
20 Secretary of the Treasury that the foreign
21 government, with respect to whose instrumentality
22 exemption is claimed, grants an equivalent



1 exemption with respect to similar service
2 performed in the foreign country by employees of
3 the United States government and of
4 instrumentalities thereof;

5 (12) Service performed as a student nurse in the employ of
6 a hospital or a nurses' training school by an
7 individual who is enrolled and is regularly attending
8 classes in a nurses' training school chartered or
9 approved pursuant to state law; and service performed
10 as an intern in the employ of a hospital by an
11 individual who has completed a four-year course in a
12 medical school chartered or approved pursuant to state
13 law;

14 (13) Service performed by an individual for an employing
15 unit as an insurance producer, if all service
16 performed by the individual for the employing unit is
17 performed for remuneration solely by way of
18 commission;

19 (14) Service performed by an individual under the age of
20 eighteen in the delivery or distribution of newspapers
21 or shopping news, not including delivery or



1 distribution to any point for subsequent delivery or
2 distribution;

3 (15) Service covered by an arrangement between the
4 department and the agency charged with the
5 administration of any other state or federal
6 unemployment compensation law pursuant to which all
7 services performed by an individual for an employing
8 unit during the period covered by the employing unit's
9 duly approved election, are deemed to be performed
10 entirely within the agency's state;

11 (16) Service performed by an individual who, pursuant to
12 the Federal Economic Opportunity Act of 1964, is not
13 subject to the federal laws relating to unemployment
14 compensation;

15 (17) Service performed by an individual for an employing
16 unit as a real estate salesperson, if all service
17 performed by the individual for the employing unit is
18 performed for remuneration solely by way of
19 commission;

20 (18) Service performed by a registered sales representative
21 for a registered travel agency, when the service



1 performed by the individual for the travel agent is
2 performed for remuneration by way of commission;

3 (19) Service performed by a vacuum cleaner salesperson for
4 an employing unit, if all services performed by the
5 individual for the employing unit are performed for
6 remuneration solely by way of commission;

7 (20) Service performed for a family-owned private
8 corporation organized for profit that employs only
9 members of the family who each own at least fifty per
10 cent of the shares issued by the corporation; provided
11 that:

12 (A) The private corporation elects to be excluded
13 from coverage under this chapter;

14 (B) The election for exclusion shall apply to all
15 shareholders and under the same circumstances;

16 (C) No more than two members of a family may be
17 eligible per entity for exclusion under this
18 paragraph;

19 (D) The exclusion shall be irrevocable for five
20 years;

21 (E) The family-owned private corporation presents to
22 the department proof that it has paid federal



1 unemployment insurance taxes as required by
2 federal law; and

3 (F) The election to be excluded from coverage shall
4 be effective the first day of the calendar
5 quarter in which the application and all
6 substantiating documents requested by the
7 department are filed with the department;

8 (21) Service performed by a direct seller as defined in
9 section 3508 of the Internal Revenue Code of 1986;

10 (22) Service performed by an election official or election
11 worker as defined in section 3309(b)(3)(F) of the
12 Internal Revenue Code of 1986, as amended;

13 (23) Service performed by an inmate or any person committed
14 to a penal institution; ~~and~~

15 (24) Domestic in-home and community-based services for
16 persons with developmental disabilities and mental
17 retardation under the medicaid home and
18 community-based services program pursuant to title 42
19 Code of Federal Regulations sections 440.180 and
20 441.300, and title 42 Code of Federal Regulations,
21 part 434, subpart A, as amended, and identified as
22 chore, personal assistance and habilitation,



1 residential habilitation, supported employment,
2 respite, and skilled nursing services, as the terms
3 are defined and amended from time to time by the
4 department of human services, performed by an
5 individual whose services are contracted by a
6 recipient of social service payments and who
7 voluntarily agrees in writing to be an independent
8 contractor of the recipient of social service payments
9 unless the individual is an employee and not an
10 independent contractor of the recipient of social
11 service payments under the Federal Unemployment Tax
12 Act [-]; and

13 (25) Service performed by a physician or an osteopathic
14 physician licensed under chapter 453 at a principal
15 place of business located in a county with a
16 population of less than five hundred thousand."

17 SECTION 3. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun, before its effective date.

20 SECTION 4. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



S.B. NO. 174

1 SECTION 5. This Act shall take effect on July 1, 2009.

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INTRODUCED BY:

[Signature]

Josh Green

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Report Title:

General Excise Tax; Employment Security

Description:

Exempts neighbor island physicians and osteopathic physicians from paying general excise taxes or unemployment insurance taxes.

