

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO THE GENERAL EXCISE TAX.

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

1           SECTION 1. The purpose of this Act is to expand the  
2 general excise exemption for a common paymaster.

3           SECTION 2. Section 237-23.5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5           "§237-23.5 Related entities; common paymaster; certain  
6 exempt transactions. (a) This chapter shall not apply to  
7 amounts received, charged, or attributable to services furnished  
8 by one related entity under section 267 of the Internal Revenue  
9 Code, as amended, to another related entity under section 267 of  
10 the Internal Revenue Code, as amended, or to imputed or stated  
11 interest attributable to loans, advances, or use of capital  
12 between related entities.

13           As used in this subsection:

14           "Related entities" means:

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



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

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

12          (4) Any group or combination of the entities described in  
13          paragraph (3) constituting a unitary business for  
14          income tax purposes;

15 whether or not the entity is located within or without the State  
16 or licensed under this chapter.

17          "Services" means legal and accounting services, the use of  
18 computer software and hardware, information technology services,  
19 database management, and those managerial and administrative  
20 services performed by an employee, officer, partner, trustee,  
21 sole proprietor, member, or manager in the person's capacity as  
22 an employee, officer, partner, trustee, sole proprietor, member,

1 or manager of one of the related entities and shall include  
2 overhead costs attributable to those services.

3 (b) This chapter shall not apply to amounts received by  
4 common paymasters which are disbursed as remuneration to  
5 employees of two or more related corporations where the common  
6 paymaster is making such remunerations on behalf of such  
7 corporations. Such amounts received or disbursed by the common  
8 paymaster shall include payments of payroll taxes and employee  
9 benefits which the common paymaster is making on behalf of  
10 related corporations and which payments are related to the  
11 employees being remunerated. [The] For this subsection only,  
12 the definitions of related corporations, common paymaster,  
13 multiple common paymasters, and concurrent employment contained  
14 in 26 Code of Federal Regulations, section 31.3121(s)-1(b) are  
15 incorporated and made a part of this subsection.

16 To the extent not covered by subsection (a), the exemption  
17 allowed by this subsection shall not apply to the cost of  
18 services, or reimbursements of such cost by one corporation to  
19 another corporation, of an employee disbursing the amounts  
20 exempted under this subsection. Each related corporation using  
21 a common paymaster or multiple common paymaster shall keep  
22 separate payroll records and other documentation required to



1 prove the existence of concurrent employment. Such records and  
2 documents shall be available for inspection by the director of  
3 taxation during normal business hours.

4 (c) This chapter shall not apply to amounts received by a  
5 common paymaster that are disbursed as remuneration to employees  
6 of two or more related persons where the common paymaster is  
7 making such remunerations on behalf of the related persons.

8 Such amounts received or disbursed by the common paymaster shall  
9 include payments of payroll taxes and employee benefits that the  
10 common paymaster is making on behalf of the related persons and  
11 which payments are for the employees being remunerated.

12 To the extent not covered by subsection (a), the exemption  
13 allowed by this subsection shall not apply to the cost of  
14 services or reimbursements of such cost by one related person to  
15 another related person, of an employee disbursing the amounts  
16 exempted under this subsection.

17 Each related person using a common paymaster or multiple  
18 common paymaster shall keep separate payroll records and other  
19 documentation required to prove the existence of concurrent  
20 employment. The records and documents shall be available for  
21 inspection by the director of taxation during normal business  
22 hours.



1 For the purpose of this subsection only:

2 "Common paymaster" means a person that disburses  
3 remuneration to employees of two or more related persons to the  
4 common paymaster on their behalf and that is responsible for  
5 keeping books and records for the payroll with respect to those  
6 employees.

7 "Related persons" mean persons related to a common  
8 paymaster within a relationship under section 267 (with respect  
9 to losses, expenses, and interest with respect to transactions  
10 between related taxpayers) of the federal Internal Revenue  
11 Code."

12 SECTION 3. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect on July 1, 2009.

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INTRODUCED BY: Erzanne Chun Oakland

*John P. ...*  
*Erzanne Chun Oakland*  
*Carol Johnson*  
*Norman Sakuma*

**Report Title:**

Common Paymaster For Related Persons; General Excise Tax  
Exemption

**Description:**

Exempts from the general excise tax the amounts received by a  
common paymaster to pay the remuneration for related persons to  
the common paymaster.

