
A BILL FOR AN ACT

RELATING TO THE GENERAL EXCISE TAX.

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

1 PART I

2 SECTION 1. The purpose of this part is to expand the
3 general excise exemption for related entities.

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

6 "**§237-24.7 Additional amounts not taxable.** In addition to
7 the amounts not taxable under section 237-24, this chapter shall
8 not apply to:

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

4 "Hotel" means an operation as defined in section
5 445-90, or a time share plan as defined in section
6 514E-1.

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

11 "Owner" means the fee owner or lessee under a
12 recorded lease of a hotel.

13 "Suboperator" means any person who, pursuant to a
14 written contract with the operator, operates or
15 manages the hotel as a subcontractor of the operator.

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

18 (2) Amounts received by the operator of a county
19 transportation system operated under an operating
20 contract with a political subdivision, where the
21 political subdivision is the owner of the county
22 transportation system. As used in this paragraph:



1 "County transportation system" means a mass-
2 transit system of motorized buses providing regularly
3 scheduled transportation within a county.

4 "Operating contract" or "contract" means a
5 contract to operate and manage a political
6 subdivision's county transportation system, which
7 provides that:

8 (A) The political subdivision shall exercise
9 substantial control over all aspects of the
10 operator's operation;

11 (B) The political subdivision controls the
12 development of transit policy, service
13 planning, routes, and fares; and

14 (C) The operator develops in advance a draft
15 budget in the same format as prescribed for
16 agencies of the political subdivision. The
17 budget must be subject to the same
18 constraints and controls regarding the
19 lawful expenditure of public funds as any
20 public sector agency, and deviations from
21 the budget must be subject to approval by



1 the appropriate political subdivision
2 officials involved in the budgetary process.

3 "Operator" means any person who, pursuant to an
4 operating contract with a political subdivision,
5 operates or manages a county transportation system.

6 "Owner" means a political subdivision that owns
7 or is the lessee of all the properties and facilities
8 of the county transportation system (including buses,
9 real estate, parking garages, fuel pumps, maintenance
10 equipment, office supplies, etc.), and that owns all
11 revenues derived therefrom;

12 (3) Surcharge taxes on rental motor vehicles imposed by
13 chapter 251 and passed on and collected by persons
14 holding certificates of registration under that
15 chapter;

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



1 "Employee" means an employee directly engaged in
2 the day-to-day operations of the orchard properties
3 and employed by the operator.

4 "Operator" means a producer who, pursuant to a
5 written contract with the owner of the orchard
6 property, operates or manages the orchard property for
7 the owner where the property contains an area
8 sufficient to make the undertaking economically
9 feasible.

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

16 "Owner" means a fee owner or lessee under a
17 recorded lease of orchard property;

18 (5) Taxes on nursing facility income imposed by chapter
19 346E and passed on and collected by operators of
20 nursing facilities;

21 (6) Amounts received under property and casualty insurance
22 policies for damage or loss of inventory used in the



1 conduct of a trade or business located within the
2 State or a portion thereof that is declared a natural
3 disaster area by the governor pursuant to section 209-
4 2;

5 (7) Amounts received as compensation by community
6 organizations, school booster clubs, and nonprofit
7 organizations under a contract with the chief election
8 officer for the provision and compensation of precinct
9 officials and other election-related personnel,
10 services, and activities, pursuant to section 11-5;

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



1 because of the use of a Hawaii trust company as a
2 paying agent or trustee;

3 (9) Amounts received by a management company from related
4 entities engaged in the business of selling interstate
5 or foreign common carrier telecommunications services
6 in amounts equal to and which are disbursed by the
7 management company for employee wages, salaries,
8 payroll taxes, insurance premiums, and benefits,
9 including retirement, vacation, sick pay, and health
10 benefits. As used in this paragraph:

11 "Employee" means employees directly engaged in
12 the day-to-day operation of related entities engaged
13 in the business of selling interstate or foreign
14 common carrier telecommunications services and
15 employed by the management company.

16 "Management company" means any person who,
17 pursuant to a written contract with a related entity
18 engaged in the business of selling interstate or
19 foreign common carrier telecommunications services,
20 provides managerial or operational services to that
21 entity.

22 "Related entities" means:



- 1 (A) An affiliated group of corporations within
2 the meaning of section 1504 (with respect to
3 affiliated group defined) of the federal
4 Internal Revenue Code of 1986, as amended;
- 5 (B) A controlled group of corporations within
6 the meaning of section 1563 (with respect to
7 definitions and special rules) of the
8 federal Internal Revenue Code of 1986, as
9 amended;
- 10 (C) Those entities connected through ownership
11 of at least eighty per cent of the total
12 value and at least eighty per cent of the
13 total voting power of each such entity (or
14 combination thereof), including
15 partnerships, associations, trusts, S
16 corporations, nonprofit corporations,
17 limited liability partnerships, or limited
18 liability companies; and
- 19 (D) Any group or combination of the entities
20 described in paragraph (C) constituting a
21 unitary business for income tax purposes;



1 whether or not the entity is located within or without
2 the State or licensed under this chapter; [~~and~~]
3 (10) Amounts received by a related entity, as defined under
4 section 237-23.5, taking into account the attribution
5 rules under Section 267, Internal Revenue Code, as
6 amended, including salaries, wages and related taxes,
7 vacation pay, sick pay, and pensions and insurance
8 paid out to or on behalf of employees of the related
9 management company and reimbursed by the related
10 company for those operating expenses; and
11 ~~[-(10)-]~~ (11) Amounts received as grants under section 206M-
12 15."

13 PART II

14 SECTION 3. The purpose of this part is to clarify the
15 department of taxation's subpoena authority for civil and
16 criminal tax investigations.

17 SECTION 4. Section 231-7, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§231-7 [Hearings] Inquiries, investigations, hearings,**
20 **and subpoenas.** (a) The director of taxation, and any
21 representative of the director duly authorized by the director,
22 may conduct any civil inquiry, investigation, or hearing,



1 relating to any assessment, or the amount of any tax, or the
2 collection of any delinquent tax, including any inquiry [~~or~~],
3 investigation, or hearing into the financial resources of any
4 delinquent taxpayer or the collectability of any delinquent tax.

5 [~~to~~] The director or other person conducting inquiries,
6 investigations, or hearings may administer oaths and take
7 testimony under oath relating to the matter of inquiry [~~or~~],
8 investigation, or hearing, and subpoena witnesses and require
9 the production of books, papers, documents, [~~and records~~
10 ~~pertinent~~] or other objects designated therein or any other
11 record however maintained, including those electronically
12 stored, that are relevant or material to [such] the inquiry[~~or~~],
13 investigation, or hearing.

14 [~~to~~] If any person disobeys any process or, having
15 appeared in obedience thereto, refuses to answer pertinent
16 questions put to the person by the director or other person
17 conducting the inquiry, investigation, or hearing, or to produce
18 any books, papers, documents, objects, or records pursuant
19 thereto, the director or other person conducting the inquiry,
20 investigation, or hearing may apply to the circuit court of the
21 circuit wherein the inquiry [~~or~~], investigation, or hearing is
22 being conducted, or to any judge of the court, setting forth the



1 disobedience to process or refusal to answer, and the court or
2 judge shall cite the person to appear before the court or judge
3 to answer the questions or to produce the books, papers,
4 documents, objects, or records, and upon the person's refusal so
5 to do commit the person to jail until the person testifies but
6 not for a longer period than sixty days. Notwithstanding the
7 serving of the term of commitment by any person, the director
8 may proceed in all respects as if the witness had not previously
9 been called upon to testify. Witnesses (other than the taxpayer
10 or the taxpayer's or its officers, directors, agents, and
11 employees) shall be allowed their fees and mileage as in cases
12 in the circuit courts, to be paid on vouchers of the department
13 of taxation, from any moneys available for expenses of the
14 department.

15 (b) The director of taxation, and any representative of
16 the director duly authorized by the director, when conducting a
17 criminal investigation, subject to the privileges enjoyed by all
18 witnesses in this State, may subpoena witnesses, examine them
19 under oath, and require the production of any books, papers,
20 documents, or other objects designated therein or any other
21 record however maintained, including those electronically



1 stored, that are relevant or material to the investigation. A
2 subpoena issued under this subsection:

3 (1) Shall state that the subpoena is issued by the
4 department and shall command each person to whom it is
5 directed to attend and give testimony at the time and
6 place specified therein, and may also command the
7 person to whom it is directed to produce books,
8 papers, documents, or other objects specifically
9 designated therein;

10 (2) May be served at any place within the State by an
11 investigator appointed pursuant to section 231-4.3 or
12 any other law enforcement official with powers of a
13 police officer;

14 (3) Shall require attendance of the witness only in the
15 county wherein the witness is served with the subpoena
16 or at any other place as is agreed upon by the witness
17 and the department; provided that if the subpoena is
18 served in a county other than that in which the
19 witness resides or is employed or transacts the
20 witness' business in person, the department shall bear
21 the witness' expenses for travel to and attendance at



1 the place named in the subpoena to the same extent as
2 provided by the rules of court; and
3 (4) Shall contain a short, plain statement of the
4 recipient's rights and the procedure for enforcing and
5 contesting the subpoena.

6 Upon application by the director, a circuit court of the county
7 wherein the witness resides or is found may compel obedience to
8 the subpoena; provided that the court, on motion promptly made,
9 may quash or modify the subpoena if compliance would be
10 unreasonable or oppressive or violate any privilege the witness
11 may be entitled to exercise in a court proceeding.

12 ~~[-d-]~~ (c) Any subpoena issued under this section that does
13 not identify the person with respect to whose liability,
14 inquiry, or investigation the subpoena is issued may be served
15 on any person only after a court proceeding in which the
16 director or another person establishes that:

17 (1) The subpoena relates to the liability, inquiry, or
18 investigation of a particular person or ascertainable
19 group or class of persons;

20 (2) There is a reasonable basis for believing that the
21 person or group or class of persons may fail or may



1 have failed to comply with any provision of title 14;
2 and

3 (3) The information sought to be obtained from the
4 examination of records or testimony and the identity
5 of the person or persons with respect to whose
6 liability the subpoena is issued is not readily
7 available from other sources.

8 (d) The department shall pay to a financial institution
9 that is served a subpoena issued under this section a fee for
10 reimbursement of costs as are necessary and that have been
11 directly incurred in searching for, reproducing, or transporting
12 books, papers, documents, or other objects designated by the
13 subpoena. Reimbursement shall be paid at the rate of \$15 per
14 hour for research time and 50 cents per page for reproduction.

15 (e) Compliance with a subpoena issued pursuant to this
16 section shall not give rise to a civil action for damages by an
17 individual or entity as to whom testimony has been given or
18 documents or other things provided in compliance with the
19 subpoena.

20 [~~e~~] (f) The provisions of this section are in addition
21 to all other provisions of law, and apply to any tax within the
22 jurisdiction of the department."



1 PART III

2 SECTION 5. Statutory material to be repealed is bracketed
3 and stricken. New statutory material is underscored.

4 SECTION 6. This Act shall take effect on July 1, 2112;
5 provided that:

- 6 (1) The amendment made to section 237-24.7, Hawaii Revised
7 Statutes, by section 2 of this Act shall not be
8 repealed when that section is reenacted on December
9 31, 2014, by section 1 of Act 91, Session Laws of
10 Hawaii 2010; and
- 11 (2) Part II shall apply to subpoenas issued on or after
12 the effective date of this Act.



Report Title:

Related Entity; GET Exemption; Department of Taxation; Subpoena

Description:

Exempts from the general excise tax amounts received by a related entity. Clarifies subpoena authority of the Department of Taxation. Effective July 1, 2112. (SB1107 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

