
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, maintenance
18 services, reimbursable repairs and maintenance expenses paid on
19 behalf of affiliates, the use of computer software and hardware,
20 information technology services, database management, and those
21 managerial and administrative services performed by an employee,
22 officer, partner, trustee, sole proprietor, member, or manager



1 in the person's capacity as an employee, officer, partner,
2 trustee, sole proprietor, member, or manager of one of the
3 related entities and shall include overhead costs attributable
4 to those services.

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

18 To the extent not covered by subsection (a), the exemption
19 allowed by this subsection shall not apply to the cost of
20 services, or reimbursements of such cost by one corporation to
21 another corporation, of an employee disbursing the amounts
22 exempted under this subsection. Each related corporation using



1 a common paymaster or multiple common paymaster shall keep
2 separate payroll records and other documentation required to
3 prove the existence of concurrent employment. Such records and
4 documents shall be available for inspection by the director of
5 taxation during normal business hours.

6 (c) This chapter shall not apply to amounts received by a
7 common paymaster that are disbursed as remuneration to employees
8 of two or more related persons where the common paymaster is
9 making the remunerations on behalf of the related persons. The
10 amounts received or disbursed by the common paymaster shall
11 include payments of payroll taxes and employee benefits that the
12 common paymaster is making on behalf of the related persons and
13 which payments are for the employees being remunerated.

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

19 Each related person using a common paymaster or multiple
20 common paymaster shall keep separate payroll records and other
21 documentation required to prove the existence of concurrent
22 employment. The records and documents shall be available for



1 inspection by the director of taxation during normal business
2 hours.

3 For the purpose of this subsection only:

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

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

14 SECTION 3. Section 237-24.7, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§237-24.7 Additional amounts not taxable.** In addition to
17 the amounts not taxable under section 237-24, this chapter shall
18 not apply to:

19 (1) Amounts received by the operator of a hotel from the
20 owner of the hotel or from a time share association,
21 and amounts received by the suboperator of a hotel
22 from the owner of the hotel, from a time share



1 association, or from the operator of the hotel, in
2 amounts equal to and which are disbursed by the
3 operator or suboperator for employee wages, salaries,
4 payroll taxes, insurance premiums, and benefits,
5 including retirement, vacation, sick pay, and health
6 benefits. As used in this paragraph:

7 "Employee" means employees directly engaged in
8 the day-to-day operation of the hotel and employed by
9 the operator or suboperator.

10 "Hotel" means an operation as defined in section
11 445-90 or a time share plan as defined in section
12 514E-1.

13 "Operator" means any person who, pursuant to a
14 written contract with the owner of a hotel or time
15 share association, operates or manages the hotel for
16 the owner or time share association.

17 "Owner" means the fee owner or lessee under a
18 recorded lease of a hotel.

19 "Suboperator" means any person who, pursuant to a
20 written contract with the operator, operates or
21 manages the hotel as a subcontractor of the operator.



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

- 3 (2) Amounts received by the operator of a county
4 transportation system operated under an operating
5 contract with a political subdivision, where the
6 political subdivision is the owner of the county
7 transportation system. As used in this paragraph:

8 "County transportation system" means a mass
9 transit system of motorized buses providing regularly
10 scheduled transportation within a county.

11 "Operating contract" or "contract" means a
12 contract to operate and manage a political
13 subdivision's county transportation system, which
14 provides that:

15 (A) The political subdivision shall exercise
16 substantial control over all aspects of the
17 operator's operation;

18 (B) The political subdivision controls the
19 development of transit policy, service
20 planning, routes, and fares; and

21 (C) The operator develops in advance a draft
22 budget in the same format as prescribed for



1 agencies of the political subdivision. The
2 budget must be subject to the same
3 constraints and controls regarding the
4 lawful expenditure of public funds as any
5 public sector agency, and deviations from
6 the budget must be subject to approval by
7 the appropriate political subdivision
8 officials involved in the budgetary process.

9 "Operator" means any person who, pursuant to an
10 operating contract with a political subdivision,
11 operates or manages a county transportation system.

12 "Owner" means a political subdivision that owns
13 or is the lessee of all the properties and facilities
14 of the county transportation system (including buses,
15 real estate, parking garages, fuel pumps, maintenance
16 equipment, office supplies, etc.), and that owns all
17 revenues derived therefrom;

- 18 (3) Surcharge taxes on rental motor vehicles imposed by
19 chapter 251 and passed on and collected by persons
20 holding certificates of registration under that
21 chapter;



1 (4) Amounts received by the operator of orchard properties
2 from the owner of the orchard property in amounts
3 equal to and which are disbursed by the operator for
4 employee wages, salaries, payroll taxes, insurance
5 premiums, and benefits, including retirement,
6 vacation, sick pay, and health benefits. As used in
7 this paragraph:

8 "Employee" means an employee directly engaged in
9 the day-to-day operations of the orchard properties
10 and employed by the operator.

11 "Operator" means a producer who, pursuant to a
12 written contract with the owner of the orchard
13 property, operates or manages the orchard property for
14 the owner where the property contains an area
15 sufficient to make the undertaking economically
16 feasible.

17 "Orchard property" means any real property that
18 is used to raise trees with a production life cycle of
19 fifteen years or more producing fruits or nuts having
20 a normal period of development from the initial
21 planting to the first commercially saleable harvest of
22 not less than three years.



1 "Owner" means a fee owner or lessee under a
2 recorded lease of orchard property;

3 (5) Taxes on nursing facility income imposed by chapter
4 346E and passed on and collected by operators of
5 nursing facilities;

6 (6) Amounts received under property and casualty insurance
7 policies for damage or loss of inventory used in the
8 conduct of a trade or business located within the
9 State or a portion thereof that is declared a natural
10 disaster area by the governor pursuant to section 209-
11 2;

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

18 (8) Interest received by a person domiciled outside the
19 State from a trust company (as defined in section
20 412:8-101) acting as payment agent or trustee on
21 behalf of the issuer or payees of an interest bearing
22 instrument or obligation, if the interest would not



1 have been subject to tax under this chapter if paid
2 directly to the person domiciled outside the State
3 without the use of a paying agent or trustee; provided
4 that if the interest would otherwise be taxable under
5 this chapter if paid directly to the person domiciled
6 outside the State, it shall not be exempt solely
7 because of the use of a Hawaii trust company as a
8 paying agent or trustee;

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

17 "Employee" means employees directly engaged in
18 the day-to-day operation of related entities engaged
19 in the business of selling interstate or foreign
20 common carrier telecommunications services and
21 employed by the management company.



1 "Management company" means any person who,
2 pursuant to a written contract with a related entity
3 engaged in the business of selling interstate or
4 foreign common carrier telecommunications services,
5 provides managerial or operational services to that
6 entity.

7 "Related entities" means:

- 8 (A) An affiliated group of corporations within
9 the meaning of section 1504 (with respect to
10 affiliated group defined) of the federal
11 Internal Revenue Code of 1986, as amended;
- 12 (B) A controlled group of corporations within
13 the meaning of section 1563 (with respect to
14 definitions and special rules) of the
15 federal Internal Revenue Code of 1986, as
16 amended;
- 17 (C) Those entities connected through ownership
18 of at least eighty per cent of the total
19 value and at least eighty per cent of the
20 total voting power of each such entity (or
21 combination thereof), including
22 partnerships, associations, trusts, S



1 corporations, nonprofit corporations,
2 limited liability partnerships, or limited
3 liability companies; and

4 (D) Any group or combination of the entities
5 described in paragraph (C) constituting a
6 unitary business for income tax purposes;

7 whether or not the entity is located within or without
8 the State or licensed under this chapter; [and]

9 (10) Amounts received by a related or indirectly related
10 management entity, as defined under section 237-23.5,
11 taking into account the attribution rules under
12 section 267, Internal Revenue Code, as amended,
13 managing the business of the affiliates, including
14 salaries, wages and related taxes, vacation pay, sick
15 pay, and pensions and insurance paid out to or on
16 behalf of employees of the related management company
17 and reimbursed by the related company for those
18 operating expenses; and

19 [~~(10)~~] (11) Amounts received as grants under section 206M-
20 15."

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



1 SECTION 5. This Act shall take effect on July 1, 2050;
2 provided that the amendment made to section 237-24.7, Hawaii
3 Revised Statutes, by section 3 of this Act shall not be repealed
4 when that section is reenacted on December 31, 2014, by section
5 1 of Act 91, Session Laws of Hawaii 2010.



Report Title:

Common Paymaster; Management Entity; GET Exemption

Description:

Exempts from the GET the amounts received by a common paymaster to pay the remuneration for related persons to the common paymaster, and amounts received by a related or indirectly related management entity. Effective 7/1/2050. (SD1)

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

