
From: Darryl Wong [dwong@99imperial.net]
Sent: Thursday, March 17, 2011 12:07 PM
To: 'Darryl Wong'; WAM Testimony
Cc: 'James Wong'; 'Napua Wong'
Subject: RE: HB848 HD2 (Common Paymaster)
Attachments: SB1107-HB 848.pdf

Categories: Green Category

Sorry the file I sent earlier was over 4 meg. This is a compressed file of the same scan.

From: Darryl Wong [mailto:dwong@99imperial.net]
Sent: Thursday, March 17, 2011 11:52 AM
To: 'WAMTestimony@Capitol.hawaii.gov'
Cc: 'James Wong'; 'Napua Wong'
Subject: FW: HB848 HD2 (Common Paymaster)

Dear Committee members,

My name is Darryl Wong and I presented before your committee the proposed changes to HB848 HD2. I submitted as well the SB1107 with the changes that we had asked the House to change. We do not feel this bill will take away revenues from the State as this is more a clarification of how many family businesses in Hawaii interpret the meaning of the State law. As years go on and families pass on their businesses to their sons and daughters or even grand children, ownership interests of companies change so there is sometimes not a direct ownership relationship between companies but an indirect relationship in ownership. We feel this change merely clarifies the law so local family businesses are not penalized unfairly by the Tax Departments interpretation of the law. Before the Bill crossed over, we attempted to clarify our proposed change to the language of the Bill but were unable to do so hence we are making the request here so both what has been presented to both House and Senate match.

Our proposed language change greatly simplifies the purpose and intent of the bill by adding paragraph 10 to Section 237-24.7. For the purposes of this 2011 session, our desire is to ensure that only salaries are protected under the law as it pertains to reimbursable expenses for a common paymaster. Attached is our marked-up copy that illustrates our request for the following:

1. Delete the entirety of Section 2 as it is written.

2. Add a new Section 2 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

shall not be exempt solely because of the use of a Hawaii trust company as a paying agent or trustee;

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

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

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

"Related entities" means:

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

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

(C) Those entities connected through ownership of at least eighty per cent of the total value and at least eighty per cent of the total voting power of each such entity (or combination thereof), including partnerships, associations, trusts, S corporations, nonprofit corporations, limited

liability partnerships, or limited liability companies; and

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

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

3. Section 3 remains the same:

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

4. Section 4 includes language to prevent the repeal of the law, with an effective date change to July 2, 2011.

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

We thank you in advance for all your time and consideration of our request. Please feel free to contact me at 943-3106 should you have any questions or require further clarification.

Aloha,

Darryl P. Wong

3737 Manoa Road, Honolulu, HI 96822

Phone: (808) 943-3102 Fax: (808) 943-3140

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

S.B. NO. 1107
S.D. 1

A BILL FOR AN ACT

RELATING TO THE GENERAL EXCISE TAX.

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

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

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

Replace with section 2

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

As used in this subsection:

"Related entities" means:

- (1) An affiliated group of corporations within the meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended;
- (2) A controlled group of corporations within the meaning of section 1563 (with respect to definitions and special rules) of the federal Internal Revenue Code of 1986, as amended;
- (3) Those entities connected through ownership of at least eighty

per cent of the total value and at least eighty per cent of the total voting power of each such entity (or combination thereof), including partnerships, associations, trusts, S corporations, nonprofit corporations, limited liability partnerships, or limited liability companies; and

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

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

"Services" means legal and accounting services, maintenance services, reimbursable repairs and maintenance expenses paid on behalf of affiliates, the use of computer software and hardware, information technology services, database management, and those managerial and administrative services performed by an employee, officer, partner, trustee, sole proprietor, member, or manager in the person's capacity as an employee, officer, partner, trustee, sole proprietor, member, or manager of one of the related entities and shall include overhead costs attributable to those services.

(b) This chapter shall not apply to amounts received by common paymasters which are disbursed as remuneration to employees of two or more related corporations where the common paymaster is making such remunerations on behalf of such corporations. Such amounts received or disbursed by the common paymaster shall include payments of payroll taxes and employee benefits which the common paymaster is making on behalf of related corporations and which payments are related to the employees being remunerated. [The] For this subsection only, the definitions of related corporations, common paymaster, multiple common

paymasters, and concurrent employment contained in 26 Code of Federal Regulations, section 31.3121(s)-1(b) are incorporated and made a part of this subsection.

To the extent not covered by subsection (a), the exemption allowed by this subsection shall not apply to the cost of services, or reimbursements of such cost by one corporation to another corporation, of an employee disbursing the amounts exempted under this subsection. Each related corporation using a common paymaster or multiple common paymaster shall keep separate payroll records and other documentation required to prove the existence of concurrent employment. Such records and documents shall be available for inspection by the director of taxation during normal business hours.

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

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

Each related person using a common paymaster or multiple common paymaster shall keep separate payroll records and other documentation required to prove the existence of concurrent employment. The records

and documents shall be available for inspection by the director of taxation during normal business hours.

For the purpose of this subsection only:

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

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

SECTION ~~2~~³, Section 237-24.7, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Amounts received by the operator of a hotel from the owner of the hotel or from a time share association, and amounts received by the suboperator of a hotel from the owner of the hotel, from a time share association, or from the operator of the hotel, in amounts equal to and which are disbursed by the operator or suboperator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

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

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

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

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

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

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

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

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

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

- (A) The political subdivision shall exercise substantial control over all aspects of the operator's operation;
- (B) The political subdivision controls the development of transit policy, service planning, routes, and fares;

and

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

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

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

- (3) Surcharge taxes on rental motor vehicles imposed by chapter 251 and passed on and collected by persons holding certificates of registration under that chapter;
- (4) Amounts received by the operator of orchard properties from the owner of the orchard property in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

"Employee" means an employee directly engaged in the day-

to-day operations of the orchard properties and employed by the operator.

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

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

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

- (5) Taxes on nursing facility income imposed by chapter 346E and passed on and collected by operators of nursing facilities;
- (6) Amounts received under property and casualty insurance policies for damage or loss of inventory used in the conduct of a trade or business located within the State or a portion thereof that is declared a natural disaster area by the governor pursuant to section 209-2;
- (7) Amounts received as compensation by community organizations, school booster clubs, and nonprofit organizations under a contract with the chief election officer for the provision and compensation of precinct officials and other election-related personnel, services, and activities, pursuant to section 11-5;
- (8) Interest received by a person domiciled outside the State from a trust company (as defined in section 412:8-101) acting as

payment agent or trustee on behalf of the issuer or payees of an interest bearing instrument or obligation, if the interest would not have been subject to tax under this chapter if paid directly to the person domiciled outside the State without the use of a paying agent or trustee; provided that if the interest would otherwise be taxable under this chapter if paid directly to the person domiciled outside the State, it shall not be exempt solely because of the use of a Hawaii trust company as a paying agent or trustee;

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

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

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

"Related entities" means:

- (A) An affiliated group of corporations within the

meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended;

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

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

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

whether or not the entity is located within or without the State or licensed under this chapter; ~~and~~

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

~~(10) Amounts received as grants under section 206M-15.1~~

SECTION ~~3~~³. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored. 2011

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