

SB 1107

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Expand common paymaster exemption

BILL NUMBER: SB 1107; HB 848 (Identical)

INTRODUCED BY: SB by Chun Oakland and 2 Democrats; HB by Say

BRIEF SUMMARY: Amends HRS section 237-23.5 to provide that the general excise tax shall not be applicable to amounts received by one related entity under IRC section 267 to another IRC section 267 entity. The 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 such remunerations on behalf of the related persons. Such 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 are payments which the for the employees are being remunerated.

Requires each related person using a common paymaster or multiple common paymaster to 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.

Defines “common paymaster” and “related persons” for purposes of the measure.

EFFECTIVE DATE: July 1, 2011

STAFF COMMENTS: Currently the common paymaster general excise tax exemption is applicable to: (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** percent of the total value and at least **eighty** percent 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.

The proposed measure expands the common paymaster provisions to include IRC section 267 entities. While section 267 entities are entities connected through ownership of at least **fifty** rather than **eighty** percent of the total value and at least **fifty** rather than **eighty** percent of the total voting power of each such entity (or combination thereof), if this measure is adopted and expands the common paymaster general excise tax exemption, such transactions should be examined to ensure that only those common paymaster transactions are exempt. Further, as drafted, the changes being proposed in this bill may have unintended consequences for those companies that meet the eighty percent test insofar as the application

of Code sections 1504 and 1563. Instead of tagging the Section 267 entities onto the common paymaster provisions, consideration might be given to adding a new paragraph to HRS section 237-24.7 where the reimbursement of payroll and employee benefits by a related company is addressed. It should be noted that when the common paymaster provisions were established by Sections 1504 and 1563 in 1988, the eighty percent ownership was a critical test as to the applicability of the exemption. To now dilute that test raises questions about the appropriateness of the exemption.

If, in fact, this is a simple reimbursement of costs for payroll and employee benefits without any additional consideration, then the transaction is already exempt under HRS Sec. 237-20, provided there is no additional fee or remuneration for the disbursing paymaster for providing that service. Therefore, it appears that these particular related companies are indeed compensating the paymaster for this service and, therefore, are seeking this special treatment.

Digested 2/4/11

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 27, 2011 10:26 PM
To: WAM Testimony
Cc: thirr33@gmail.com
Subject: Testimony for SB1107 on 3/1/2011 9:20:00 AM
Attachments: Van Gogh's Iris.jpg; Palomino Horse.bmp

Testimony for WAM 3/1/2011 9:20:00 AM SB1107

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Arvid Tadao Youngquist
Organization: The Mestizo Association
Address:
Phone:
E-mail: thirr33@gmail.com
Submitted on: 2/27/2011

Comments:
Chair, Senate WAM Committee
Honorable Members of the Committee

We support SB 1107 Relating to the GET.

This measure is narrowly focused to a common paymaster and hopefully cut the burden to related persons by half.

Mahalo for this opportunity to submit testimony.

Arvid Tadao Youngquist
Chair and Editor
The Mestizo Association