

JAN 22 2007

A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAXES.

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

1 SECTION 1. Section 237-24.3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§237-24.3 Additional amounts not taxable. In addition to
4 the amounts not taxable under section 237-24, this chapter shall
5 not apply to:

6 (1) Amounts received from the loading, transportation, and
7 unloading of agricultural commodities shipped for a
8 producer or produce dealer on one island of this State
9 to a person, firm, or organization on another island
10 of this State. The terms "agricultural commodity",
11 "producer", and "produce dealer" shall be defined in
12 the same manner as they are defined in section 147-1;
13 provided that agricultural commodities need not have
14 been produced in the State;

15 (2) Amounts received from sales of:

16 (A) Intoxicating liquor as the term "liquor" is
17 defined in chapter 244D;



1 (B) Cigarettes and tobacco products as defined in
2 chapter 245; and

3 (C) Agricultural, meat, or fish products;
4 to any person or common carrier in interstate or
5 foreign commerce, or both, whether ocean-going or air,
6 for consumption out-of-state on the shipper's vessels
7 or airplanes;

8 (3) Amounts received by the manager or submanager or board
9 of directors of:

10 (A) An association of apartment owners of a
11 condominium property regime established in
12 accordance with chapter 514B; or

13 (B) A nonprofit homeowners or community association
14 incorporated in accordance with chapter 414D or
15 any predecessor thereto and existing pursuant to
16 covenants running with the land,
17 in reimbursement of sums paid for common expenses;

18 (4) Amounts received or accrued from:

19 (A) The loading or unloading of cargo from ships,
20 barges, vessels, or aircraft, whether or not the
21 ships, barges, vessels, or aircraft travel



1 between the State and other states or countries
2 or between the islands of the State;

3 (B) Tugboat services including pilotage fees
4 performed within the State, and the towage of
5 ships, barges, or vessels in and out of state
6 harbors, or from one pier to another; and

7 (C) The transportation of pilots or governmental
8 officials to ships, barges, or vessels offshore;
9 rigging gear; checking freight and similar
10 services; standby charges; and use of moorings
11 and running mooring lines;

12 (5) Amounts received by an employee benefit plan by way of
13 contributions, dividends, interest, and other income;
14 and amounts received by a nonprofit organization or
15 office, as payments for costs and expenses incurred
16 for the administration of an employee benefit plan;
17 provided that this exemption shall not apply to any
18 gross rental income or gross rental proceeds received
19 after June 30, 1994, as income from investments in
20 real property in this State; and provided further that
21 gross rental income or gross rental proceeds from
22 investments in real property received by an employee

1 benefit plan after June 30, 1994, under written
2 contracts executed prior to July 1, 1994, shall not be
3 taxed until the contracts are renegotiated, renewed,
4 or extended, or until after December 31, 1998,
5 whichever is earlier. For the purposes of this
6 paragraph, "employee benefit plan" means any plan as
7 defined in section 1002(3) of title 29 of the United
8 States Code, as amended;

9 (6) Amounts received for purchases made with United States
10 Department of Agriculture food coupons under the
11 federal food stamp program, and amounts received for
12 purchases made with United States Department of
13 Agriculture food vouchers under the Special
14 Supplemental Foods Program for Women, Infants and
15 Children;

16 (7) Amounts received by a hospital, infirmary, medical
17 clinic, health care facility, pharmacy, or a
18 practitioner licensed to administer the drug to an
19 individual for selling prescription drugs or
20 prosthetic devices to an individual; provided that
21 this paragraph shall not apply to any amounts received



1 for services provided in selling prescription drugs or
2 prosthetic devices. As used in this paragraph:

3 (A) "Prescription drugs" are those drugs defined
4 under section 328-1 and dispensed by filling or
5 refilling a written or oral prescription by a
6 practitioner licensed under law to administer the
7 drug and sold by a licensed pharmacist under
8 section 328-16 or practitioners licensed to
9 administer drugs; and

10 (B) "Prosthetic device" means any artificial device
11 or appliance, instrument, apparatus, or
12 contrivance, including their components, parts,
13 accessories, and replacements thereof, used to
14 replace a missing or surgically removed part of
15 the human body, which is prescribed by a licensed
16 practitioner of medicine, osteopathy, or podiatry
17 and which is sold by the practitioner or which is
18 dispensed and sold by a dealer of prosthetic
19 devices; provided that "prosthetic device" shall
20 not mean any auditory, ophthalmic, dental, or
21 ocular device or appliance, instrument,
22 apparatus, or contrivance;



1 (8) Taxes on transient accommodations imposed by chapter
2 237D and passed on and collected by operators holding
3 certificates of registration under that chapter;

4 (9) Amounts received as dues by an unincorporated
5 merchants association from its membership for
6 advertising media, promotional, and advertising costs
7 for the promotion of the association for the benefit
8 of its members as a whole and not for the benefit of
9 an individual member or group of members less than the
10 entire membership;

11 (10) Amounts received by a labor organization for real
12 property leased to:

13 (A) A labor organization; or

14 (B) A trust fund established by a labor organization
15 for the benefit of its members, families, and
16 dependents for medical or hospital care, pensions
17 on retirement or death of employees,
18 apprenticeship and training, and other membership
19 service programs.

20 As used in this paragraph, "labor organization" means
21 a labor organization exempt from federal income tax



1 under section 501(c)(5) of the Internal Revenue Code,
2 as amended;

3 (11) Amounts received from foreign diplomats and consular
4 officials who are holding cards issued or authorized
5 by the United States Department of State granting them
6 an exemption from state taxes; and

7 (12) Amounts received as rent for the rental or leasing of
8 aircraft or aircraft engines used by the lessees or
9 renters for interstate air transportation of
10 passengers and goods. For purposes of this paragraph,
11 payments made pursuant to a lease shall be considered
12 rent regardless of whether the lease is an operating
13 lease or a financing lease. The definition of
14 "interstate air transportation" is the same as in 49
15 U.S.C. 40102."

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

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

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



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

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

12 "Hotel" means an operation as defined in section
13 445-90[-] or a time share plan as defined in section
14 514E-1.

15 "Operator" means any person who, pursuant to a
16 written contract with the owner of a hotel[-] or time
17 share association, operates or manages the hotel for
18 the owner[-] or time share association.

19 "Owner" means the fee owner or lessee under a
20 recorded lease of a hotel;



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

4 "Time share association" means an association as
5 defined in section 514E-1.

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

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

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

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



- 1 (B) The political subdivision controls the
- 2 development of transit policy, service
- 3 planning, routes, and fares; and
- 4 (C) The operator develops in advance a draft
- 5 budget in the same format as prescribed for
- 6 agencies of the political subdivision. The
- 7 budget must be subject to the same
- 8 constraints and controls regarding the
- 9 lawful expenditure of public funds as any
- 10 public sector agency, and deviations from
- 11 the budget must be subject to approval by
- 12 the appropriate political subdivision
- 13 officials involved in the budgetary process.

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

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



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

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

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

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

21 "Orchard property" means any real property that
22 is used to raise trees with a production life cycle of



1 fifteen years or more producing fruits or nuts having
2 a normal period of development from the initial
3 planting to the first commercially saleable harvest of
4 not less than three years.

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

7 (5) Taxes on nursing facility income imposed by chapter
8 346E and passed on and collected by operators of
9 nursing facilities;

10 (6) Amounts received under property and casualty insurance
11 policies for damage or loss of inventory used in the
12 conduct of a trade or business located within the
13 State or a portion thereof that is declared a natural
14 disaster area by the governor pursuant to section
15 209-2;

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



- 1 (8) Interest received by a person domiciled outside the
2 State from a trust company (as defined in section
3 412:8-101) acting as payment agent or trustee on
4 behalf of the issuer or payees of an interest bearing
5 instrument or obligation, if the interest would not
6 have been subject to tax under this chapter if paid
7 directly to the person domiciled outside the State
8 without the use of a paying agent or trustee; provided
9 that if the interest would otherwise be taxable under
10 this chapter if paid directly to the person domiciled
11 outside the State, it shall not be exempt solely
12 because of the use of a Hawaii trust company as a
13 paying agent or trustee;
- 14 (9) Amounts received by a management company from related
15 entities engaged in the business of selling interstate
16 or foreign common carrier telecommunications services
17 in amounts equal to and which are disbursed by the
18 management company for employee wages, salaries,
19 payroll taxes, insurance premiums, and benefits,
20 including retirement, vacation, sick pay, and health
21 benefits. As used in this paragraph:



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

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

12 "Related entities" means:

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

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



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

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

15 (10) Amounts received as grants under section 206M-15."

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

18 SECTION 4. This Act, upon its approval, shall apply to
19 taxable years beginning after December 31, 2002.

20

INTRODUCED BY: Charles S. Smith *CS*



Report Title:

General Excise Tax

Description:

Extends the current exemptions for: (1) condominium common expenses paid by managers, and (2) hotel employee expenses paid by hotel operators, to include expenses paid by submanagers and suboperators and to include employee expenses in timeshare projects. Retroactive to December 31, 2002.

