THE SENATE TWENTY-FOURTH LEGISLATURE, 2007 STATE OF HAWAII S.B. NO. 1226

JAN 22 2007

A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAXES.

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

SECTION 1. Section 237-24.3, Hawaii Revised Statutes, is
 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" is17 defined in chapter 244D;



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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



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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)	Amou	nts received by an employee benefit plan by way of
12 13	(5)		nts received by an employee benefit plan by way of ributions, dividends, interest, and other income;
	(5)	cont	
13	(5)	cont	ributions, dividends, interest, and other income;
13 14	(5)	cont and offi	ributions, dividends, interest, and other income; amounts received by a nonprofit organization or
13 14 15	(5)	cont and offi for	ributions, dividends, interest, and other income; amounts received by a nonprofit organization or ce, as payments for costs and expenses incurred
13 14 15 16	(5)	cont and offi for prov	ributions, dividends, interest, and other income; amounts received by a nonprofit organization or ce, as payments for costs and expenses incurred the administration of an employee benefit plan;
13 14 15 16 17	(5)	cont and offi for prov gros	ributions, dividends, interest, and other income; amounts received by a nonprofit organization or ce, as payments for costs and expenses incurred the administration of an employee benefit plan; ided that this exemption shall not apply to any
13 14 15 16 17 18	(5)	cont and offi for prov gross afte	ributions, dividends, interest, and other income; amounts received by a nonprofit organization or ce, as payments for costs and expenses incurred the administration of an employee benefit plan; ided that this exemption shall not apply to any s rental income or gross rental proceeds received
13 14 15 16 17 18 19	(5)	cont and offi for prov gross afte real	ributions, dividends, interest, and other income; amounts received by a nonprofit organization or ce, as payments for costs and expenses incurred the administration of an employee benefit plan; ided that this exemption shall not apply to any s rental income or gross rental proceeds received r June 30, 1994, as income from investments in



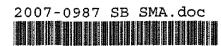
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benefit plan after June 30, 1994, under written 1 contracts executed prior to July 1, 1994, shall not be 2 taxed until the contracts are renegotiated, renewed, 3 or extended, or until after December 31, 1998, 4 whichever is earlier. For the purposes of this 5 paragraph, "employee benefit plan" means any plan as 6 defined in section 1002(3) of title 29 of the United 7 States Code, as amended; 8 (6) Amounts received for purchases made with United States 9 Department of Agriculture food coupons under the 10 federal food stamp program, and amounts received for 11 purchases made with United States Department of 12 13 Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and 14 Children: 15 Amounts received by a hospital, infirmary, medical 16 (7) clinic, health care facility, pharmacy, or a 17 practitioner licensed to administer the drug to an 18 individual for selling prescription drugs or 19 prosthetic devices to an individual; provided that 20 this paragraph shall not apply to any amounts received 21

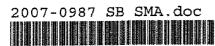
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1	for services provided in selling prescription drugs or		
2	prosthetic devices. As used in this paragraph:		
3	(A) "]	Prescription drugs" are those drugs defined	
4	u	nder section 328-1 and dispensed by filling or	
5	re	efilling a written or oral prescription by a	
6	pı	ractitioner licensed under law to administer the	
7	dı	rug and sold by a licensed pharmacist under	
8	se	ection 328-16 or practitioners licensed to	
9	ac	Aminister drugs; and	
10	(B) "I	Prosthetic device" means any artificial device	
11	01	appliance, instrument, apparatus, or	
12	cc	ontrivance, including their components, parts,	
13	ac	cessories, and replacements thereof, used to	
14	re	place a missing or surgically removed part of	
15	th	e human body, which is prescribed by a licensed	
16	pr	ractitioner of medicine, osteopathy, or podiatry	
17	ar	nd which is sold by the practitioner or which is	
18	dí	spensed and sold by a dealer of prosthetic	
19	de	vices; provided that "prosthetic device" shall	
20	nc	ot mean any auditory, ophthalmic, dental, or	
21	00	ular device or appliance, instrument,	
22	ap	paratus, 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



under section 501(c)(5) of the Internal Revenue Code, 1 as amended; 2 Amounts received from foreign diplomats and consular (11)3 officials who are holding cards issued or authorized 4 by the United States Department of State granting them 5 an exemption from state taxes; and 6 Amounts received as rent for the rental or leasing of 7 (12)aircraft or aircraft engines used by the lessees or 8 renters for interstate air transportation of 9 passengers and goods. For purposes of this paragraph, 10 payments made pursuant to a lease shall be considered 11 12 rent regardless of whether the lease is an operating 13 lease or a financing lease. The definition of "interstate air transportation" is the same as in 49 14 U.S.C. 40102." 15 SECTION 2. Section 237-24.7, Hawaii Revised Statutes, is 16 amended to read as follows: 17 "§237-24.7 Additional amounts not taxable. In addition to 18 the amounts not taxable under section 237-24, this chapter shall 19

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	<u>514E-1.</u>
15	"Operator" means any person who, pursuant to a
16	written contract with the owner of a hotel $[\tau]$ 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
19 20	"Owner" means the fee owner or lessee under a 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	"Oper	rator" means any person who, pursuant to an
15	operating	contract with a political subdivision,
16	operates c	or manages a county transportation system.
17	"Owne	er" means a political subdivision that owns
18	or is the	lessee of all the properties and facilities
19	of the cou	nty transportation system (including buses,
20	real estat	e, parking garages, fuel pumps, maintenance
21	equipment,	office supplies, etc.), and that owns all
22	revenues d	lerived therefrom;



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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

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is used to raise trees with a production life cycle of

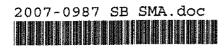


1		fifteen years or more producing fruits or nuts having
2		a normal period of development from the initial
3		planting to the first commercially saleable harvest of
4		not less than three years.
5		"Owner" means a fee owner or lessee under a
6		recorded lease of orchard property;
7	(5)	Taxes on nursing 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;



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

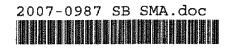


"Employee" means employees directly engaged in 1 the day-to-day operation of related entities engaged 2 in the business of selling interstate or foreign 3 common carrier telecommunications services and 4 employed by the management company. 5 "Management company" means any person who, 6 pursuant to a written contract with a related entity 7 engaged in the business of selling interstate or 8 foreign common carrier telecommunications services, 9 provides managerial or operational services to that 10 11 entity. "Related entities" means: 12 13 (A) An affiliated group of corporations within the meaning of section 1504 (with respect to 14 affiliated group defined) of the federal 15 Internal Revenue Code of 1986, as amended; 16 (B) A controlled group of corporations within 17 the meaning of section 1563 (with respect to 18 definitions and special rules) of the 19 federal Internal Revenue Code of 1986, as 20 amended; 21



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 o	or not the entity is located within or without
14	the State	or licensed under this chapter; and
15	(10) Amounts r	eceived as grants under section 206M-15."
16	SECTION 3. St	atutory material to be repealed is bracketed
17	and stricken. New	statutory material is underscored.
18	SECTION 4. Th	is Act, upon its approval, shall apply to
19	taxable years begin	ning after December 31, 2002.
20		

INTRODUCED BY: Chumbersichil gk.



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.

