HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII

H.B. NO. 3216

A BILL FOR AN ACT

RELATING TO EXEMPTIONS FROM THE GENERAL EXCISE TAX.

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

SECTION 1. Section 237-8.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) No county surcharge on state tax shall be established on any:

(1) Gross income or gross proceeds taxable under this chapter at the one-half per cent tax rate;

(2) Gross income or gross proceeds taxable under this chapter at the 0.15 per cent tax rate; [~~or~~ ~~(3)~~] (3) Gross proceeds or income arising from the manufacture, production, packaging, and sale of food items within the State, as defined in chapter 237- ; or

(4) Transactions, amounts, persons, gross income, or gross proceeds exempt from tax under this chapter.

SECTION 2. Section 237-23, Hawaii Revised Statutes, is amended to read as follows:

"§237-23 **Exemptions, persons exempt, applications for exemption.** (a) This chapter shall not apply to the following persons:

(1) Public service companies (as that term is defined in section 239-2), with respect to the gross income, either actual gross income or gross income estimated and adjusted, which is included in the measure of the tax imposed by chapter 239;

(2) Public utilities owned and operated by the State or any county or other political subdivision thereof;

(3) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services, or other benefits to the members of such societies, orders, or associations, and to their dependents;

(4) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing

1 facilities qualifying for a loan under the laws of the
2 United States as authorized by section 202 of the
3 Housing Act of 1959, as amended, as well as that of
4 operating a prepaid legal services plan, as well as
5 that of operating or managing a homeless facility, or
6 any other program for the homeless authorized under
7 chapter 201G, part IV;
8 (5) Business leagues, chambers of commerce, boards of
9 trade, civic leagues, agricultural and horticultural
10 organizations, and organizations operated exclusively
11 for the benefit of the community and for the promotion
12 of social welfare which shall include the operation of
13 a prepaid legal service plan, and from which no profit
14 inures to the benefit of any private stockholder or
15 individual;
16 (6) Hospitals, infirmaries, [~~and sanitaria;~~] skilled
17 nursing facilities, intermediate care facilities,
18 adult residential care homes, adult foster homes,
19 adult day care facilities, assisted living facilities,
20 and sanitaria;
21 (7) Cooperative associations incorporated under chapter
22 421 or Code section 521 cooperatives which fully meet

the requirements of section 421-23, except Code section 521 cooperatives need not be organized in Hawaii; provided that:

(A) The exemption shall apply only to the gross income derived from activities which are pursuant to purposes and powers authorized by chapter 421, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;

(B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all such persons shall be so taxable; and

(C) As used in this paragraph, "section 521 cooperatives" mean associations which qualify as a cooperative under section 521 (with respect to

exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;

(8) Persons affected with Hansen's disease and kokuas, with respect to business within the county of Kalawao;

(9) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual (provided that the exemption shall apply only to the activities of such persons in the conduct of cemeteries and not to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of such persons); and

(10) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations.

(b) The exemptions enumerated in subsection (a)(3) to [~~(6)~~] (5) shall apply only:

(1) To those persons who shall have registered with the department of taxation by filing a written application for registration in such form as the department shall

prescribe, shall have paid the registration fee of $20, and shall have had the exemption allowed by the department or by a court or tribunal of competent jurisdiction upon appeal from any assessment resulting from disallowance of the exemption by the department;

(2) To activities from which no profit inures to the benefit of any private stockholder or individual, except for death or other benefits to the members of fraternal societies; and

(3) To the fraternal, religious, charitable, scientific, educational, communal, or social welfare activities of such persons[~~, or to the activities of such hospitals, infirmaries, and sanitaria as such~~], and not to any activity the primary purpose of which is to produce income even though the income is to be used for or in furtherance of the exempt activities of such persons.

(c) To obtain allowance of an exemption:

(1) A person under subsection (a)(3) to [~~(6)~~] (5), who has received or applied for recognition of tax exempt status under section 501(c)(3), (4), (6), or (8) of the Internal Revenue Code of 1986, as amended, or who is a subordinate person of a person who has received a

group exemption letter under section 501(c)(3), (4), (6), or (8) of the Internal Revenue Code of 1986, as amended, shall register with the department by filing a statement attaching a copy of the exemption or application for recognition of exempt status and any particular facts that the department may require; and

(2) All other persons under subsection (a)(3) to [~~(6)~~] (5) shall file an application for exemption in the form of an affidavit or affidavits setting forth in general all facts affecting the right to the exemption and such particular facts as the department may require, to which shall be attached such records, papers, and other information as the department may prescribe.

(d) For all persons, the statement registering the person with the department or application for exemption shall be filed on or before March 31 of the first year of registration or within three months after the commencement of business. In the event of allowance of the exemption, no further statement or application therefor need be filed unless there is a material change in the facts. In the event of disallowance of the exemption, a license may be obtained upon payment of the required fee as provided by section 237-9, less the $20 already

paid under this section, which shall be credited thereon. In the event the registrant has a license under this chapter, no further fee shall be required for registration under this section.

(e) The department for good cause may extend the time for registration or the time for filing an application for exemption."

SECTION 3. Section 237-24.3, Hawaii Revised Statutes, is amended to read as follows:

"**§237-24.3 Additional amounts not taxable.** *[Repeal and reenactment on December 31, 2009. L 2007, c 239, §4.]* In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

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

(2) Amounts received from sales of:

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

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

(C) Agricultural, meat, or fish products;

to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state on the shipper's vessels or airplanes;

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

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

(B) A nonprofit homeowners or community association incorporated in accordance with chapter 414D or any predecessor thereto and existing pursuant to covenants running with the land,

in reimbursement of sums paid for common expenses;

(4) Amounts received or accrued from:

1 (A) The loading or unloading of cargo from ships,
2 barges, vessels, or aircraft, whether or not the
3 ships, barges, vessels, or aircraft travel
4 between the State and other states or countries
5 or between the islands of the State;
6 (B) Tugboat services including pilotage fees
7 performed within the State, and the towage of
8 ships, barges, or vessels in and out of state
9 harbors, or from one pier to another; and
10 (C) The transportation of pilots or governmental
11 officials to ships, barges, or vessels offshore;
12 rigging gear; checking freight and similar
13 services; standby charges; and use of moorings
14 and running mooring lines;
15 (5) Amounts received by an employee benefit plan by way of
16 contributions, dividends, interest, and other income;
17 and amounts received by a nonprofit organization or
18 office, as payments for costs and expenses incurred
19 for the administration of an employee benefit plan;
20 provided that this exemption shall not apply to any
21 gross rental income or gross rental proceeds received
22 after June 30, 1994, as income from investments in

real property in this State; and provided further that gross rental income or gross rental proceeds from investments in real property received by an employee benefit plan after June 30, 1994, under written contracts executed prior to July 1, 1994, shall not be taxed until the contracts are renegotiated, renewed, or extended, or until after December 31, 1998, whichever is earlier. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended;

(6) Amounts received for [~~purchases~~]:

(A) Purchases made with United States Department of Agriculture food coupons under the federal food stamp program[~~, and amounts received for purchases~~];

(B) Purchases made with United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;

(C) Purchases by any purchaser of items that qualify under the state Special Supplemental Foods Program for Women, Infants, and Children as of January 1, 2008;

provided that if the state Special Supplemental Foods Program for Women, Infants, and Children ceases, proceeds from purchases of the most recent qualifying items shall remain exempt amounts under this subsection; and

(D) Purchases by any purchaser of the following items:

(i) Rice, packages of up to 25 lbs.;

(ii) Poi, packages of up to 5 lbs.; and

(iii) Spam, packages of up to 1 lb.

(7) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual; [~~provided that this paragraph shall not apply to~~] and any amounts received for services provided in selling prescription and non-prescription drugs or prosthetic devices. As used in this paragraph:

"Prescription drugs" are those drugs defined under section 328-1 and dispensed by filling or refilling a written or oral prescription by a

practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs; and

"Prosthetic device" means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body, which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and which is sold by the practitioner or which is dispensed and sold by a dealer of prosthetic devices; provided that "prosthetic device" shall not mean any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;

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

(9) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit

of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership;

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

(A) A labor organization; or

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

As used in this paragraph, "labor organization" means a labor organization exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code, as amended;

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

(12) Amounts received as rent for the rental or leasing of aircraft or aircraft engines used by the lessees or

1 renters for interstate air transportation of
2 passengers and goods. For purposes of this paragraph,
3 payments made pursuant to a lease shall be considered
4 rent regardless of whether the lease is an operating
5 lease or a financing lease. The definition of
6 "interstate air transportation" is the same as in 49
7 U.S.C. 40102.
8 (13) Amounts received from the rent, lease, or sale of
9 medical equipment. As used in this paragraph:
10 (A) "Medical equipment" includes any device,
11 instrument, appliance, apparatus or contrivance,
12 including their components, parts, accessories, and
13 replacements thereof, either electronic, mechanical,
14 or otherwise that is intended for the use in the
15 diagnosis, cure, mitigation, treatment, or prevention
16 of disease or the protection of wellness of body; and
17 (14) Amounts received from the provision of health care or
18 long-term care services. As used in this paragraph:
19 (A) "Health care services" means services involved in
20 the diagnosis, cure, mitigation, treatment, or
21 prevention of disease or the promotion of wellness of
22 body when provided by licensed doctor, licensed

dentist, and entities licensed by the state to provide services described herein.

(B) "Long-term care services" means one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital."

SECTION 4. Act 239, Session Laws of Hawaii 2007, is amended by amending section 4 to read as follows:

"This Act shall take effect on January 1, 2008; provided that this Act shall be repealed on December 31, 2009, [~~and section 237-24.3, Hawaii Revised Statutes~~,] and section 237-24.7, Hawaii Revised Statutes, shall be reenacted in the form in which [~~they~~] it read on December 31, 2007. Further, section 237-24.3, Hawaii Revised Statutes, shall be reenacted in the form in which it read as of December 31, 2007, as further amended by section 3 of Act , Session Laws of Hawaii 2008."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2007.

H.B. NO. 3216

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INTRODUCED BY: Corinne W. L. Ching

JAN 22 2008

H.B. NO. 3216

Report Title:
Taxation

Description:
Provides general excise tax exemptions for certain food items and medicine and medical services.