

JAN 18 2008

A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAX.

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

1 SECTION 1. The purpose of this Act is to extend the
2 general excise tax exemption for non-profit hospitals,
3 infirmaries, and sanitarium to for-profit hospitals, infirmaries,
4 and sanitarium.

5 The legislature intends that all gross income or gross
6 proceeds derived by non-profit or for-profit hospitals,
7 infirmaries, and sanitarium, including income or proceeds derived
8 from the sale of prescription drugs and prosthetic devices be
9 exempt from the general excise tax.

10 SECTION 2. Section 237-23, Hawaii Revised Statutes, is
11 amended by amending subsections (a), (b), and (c) to read as
12 follows:

13 "(a) This chapter shall not apply to the following
14 persons:

15 (1) Public service companies as that term is defined in
16 section 239-2, with respect to the gross income,
17 either actual gross income or gross income estimated



1 and adjusted, that is included in the measure of the
2 tax imposed by chapter 239;

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

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

13 (4) Corporations, associations, trusts, or societies
14 organized and operated exclusively for religious,
15 charitable, scientific, or educational purposes, as
16 well as that of operating senior citizens housing
17 facilities qualifying for a loan under the laws of the
18 United States as authorized by section 202 of the
19 Housing Act of 1959, as amended, as well as that of
20 operating a prepaid legal services plan, as well as
21 that of operating or managing a homeless facility, or



- 1 any other program for the homeless authorized under
2 part VII of chapter 356D;
- 3 (5) Business leagues, chambers of commerce, boards of
4 trade, civic leagues, agricultural and horticultural
5 organizations, and organizations operated exclusively
6 for the benefit of the community and for the promotion
7 of social welfare that shall include the operation of
8 a prepaid legal service plan, and from which no profit
9 inures to the benefit of any private stockholder or
10 individual;
- 11 (6) [~~Hospitals,~~] Non-profit and for-profit hospitals,
12 infirmaries, and sanitararia;
- 13 (7) Cooperative associations incorporated under chapter
14 421 or Code section 521 cooperatives which fully meet
15 the requirements of section 421-23, except Code
16 section 521 cooperatives need not be organized in
17 Hawaii; provided that:
- 18 (A) The exemption shall apply only to the gross
19 income derived from activities that are pursuant
20 to purposes and powers authorized by chapter 421,
21 except those provisions pertaining to or



1 requiring corporate organization in Hawaii do not
2 apply to Code section 521 cooperatives;

3 (B) The exemption shall not relieve any person who
4 receives any proceeds of sale from the
5 association of the duty of returning and paying
6 the tax on the total gross proceeds of the sales
7 on account of which the payment was made, in the
8 same amount and at the same rate as would apply
9 thereto had the sales been made directly by the
10 person, and all those persons shall be [~~se~~]
11 taxable; and

12 (C) As used in this paragraph, "section 521
13 cooperatives" mean associations that qualify as a
14 cooperative under section 521 (with respect to
15 exemption of farmers' cooperatives from tax) of
16 the Internal Revenue Code of 1986, as amended;

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

19 (9) Corporations, companies, associations, or trusts
20 organized for the establishment and conduct of
21 cemeteries no part of the net earnings of which inures
22 to the financial benefit of any private stockholder or



1 individual; provided that the exemption shall apply
2 only to the activities of those persons in the conduct
3 of cemeteries and shall not apply to any activity the
4 primary purpose of which is to produce income, even
5 though the income is to be used for or in the
6 furtherance of the exempt activities of those persons;
7 and

8 (10) Nonprofit shippers associations operating under part
9 296 of the Civil Aeronautics Board Economic
10 Regulations.

11 (b) The exemptions enumerated in subsection (a)(3) to
12 [~~(6)~~] (5) shall apply only:

13 (1) To those persons who shall have registered with the
14 department of taxation by filing a written application
15 for registration in such form as the department shall
16 prescribe, shall have paid the registration fee of
17 \$20, and shall have had the exemption allowed by the
18 department or by a court or tribunal of competent
19 jurisdiction upon appeal from any assessment resulting
20 from disallowance of the exemption by the department;

21 (2) To activities from which no profit inures to the
22 benefit of any private stockholder or individual,



1 except for death or other benefits to the members of
2 fraternal societies; and
3 (3) To the fraternal, religious, charitable, scientific,
4 educational, communal, or social welfare activities of
5 such persons, or to the activities of such hospitals,
6 infirmaries, and sanitarium as such, and not to any
7 activity the primary purpose of which is to produce
8 income even though the income is to be used for or in
9 furtherance of the exempt activities of such persons.
10 (c) To obtain allowance of an exemption:
11 (1) A person under subsection (a) (3) to ~~[(4),~~ (5), who
12 has received or applied for recognition of tax exempt
13 status under section 501(c) (3), (4), (6), or (8) of
14 the Internal Revenue Code of 1986, as amended, or who
15 is a subordinate person of a person who has received a
16 group exemption letter under section 501(c) (3), (4),
17 (6), or (8) of the Internal Revenue Code of 1986, as
18 amended, shall register with the department by filing
19 a statement attaching a copy of the exemption or
20 application for recognition of exempt status and any
21 particular facts that the department may require; and



1 (2) All other persons under subsection (a)(3) to [~~4~~] (5)
2 shall file an application for exemption in the form of
3 an affidavit or affidavits setting forth in general
4 all facts affecting the right to the exemption and
5 such particular facts as the department may require,
6 to which shall be attached such records, papers, and
7 other information as the department may prescribe."

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

10 "**§237-24.3 Additional amounts not taxable.** In addition to
11 the amounts not taxable under section 237-24, this chapter shall
12 not apply to:

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

22 (2) Amounts received from sales of:



- 1 (A) Intoxicating liquor as the term "liquor" is
- 2 defined in chapter 244D;
- 3 (B) Cigarettes and tobacco products as defined in
- 4 chapter 245; and
- 5 (C) Agricultural, meat, or fish products;
- 6 to any person or common carrier in interstate or
- 7 foreign commerce, or both, whether ocean-going or air,
- 8 for consumption out-of-state on the shipper's vessels
- 9 or airplanes;
- 10 (3) Amounts received by the manager, submanager, or board
- 11 of directors of:
 - 12 (A) An association of apartment owners of a
 - 13 condominium property regime established in
 - 14 accordance with chapter 514A or 514B; or
 - 15 (B) A nonprofit homeowners or community association
 - 16 incorporated in accordance with chapter 414D or
 - 17 any predecessor thereto and existing pursuant to
 - 18 covenants running with the land,
 - 19 in reimbursement of sums paid for common expenses;
- 20 (4) Amounts received or accrued from:
 - 21 (A) The loading or unloading of cargo from ships,
 - 22 barges, vessels, or aircraft, whether or not the



1 ships, barges, vessels, or aircraft travel
2 between the State and other states or countries
3 or between the islands of the State;

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

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

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



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

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

17 (7) Amounts received by a [~~hospital, infirmatory,~~] medical
18 clinic, health care facility, pharmacy, or a
19 practitioner licensed to administer the drug to an
20 individual for selling prescription drugs or
21 prosthetic devices to an individual; provided that
22 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 "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 drug
7 and sold by a licensed pharmacist under section 328-16
8 or practitioners licensed to administer drugs; and

9 "Prosthetic device" means any artificial device
10 or appliance, instrument, apparatus, or contrivance,
11 including their components, parts, accessories, and
12 replacements thereof, used to replace a missing or
13 surgically removed part of the human body, which is
14 prescribed by a licensed practitioner of medicine,
15 osteopathy, or podiatry and which is sold by the
16 practitioner or which is dispensed and sold by a
17 dealer of prosthetic devices; provided that
18 "prosthetic device" shall not mean any auditory,
19 ophthalmic, dental, or ocular device or appliance,
20 instrument, 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 4. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect on July 1, 2008.

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Report Title:

For-profit Hospitals, Infirmaries, and Sanitaria; General Excise Tax Exemption

Description:

Extends the general excise tax exemption for non-profit hospitals, infirmaries, and sanitaria to for-profit hospitals, infirmaries, and sanitaria. Makes conforming amendments.

