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# A BILL FOR AN ACT

RELATING TO THE GENERAL EXCISE TAX.

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

1           SECTION 1. The purpose of this Act is to expand the  
2 general excise tax exemption for a common paymaster.

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

5           "**§237-24.7 Additional amounts not taxable.** In addition to  
6 the amounts not taxable under section 237-24, this chapter shall  
7 not apply to:

8           (1) Amounts received by the operator of a hotel from the  
9 owner of the hotel or from a time share association,  
10 and amounts received by the suboperator of a hotel  
11 from the owner of the hotel, from a time share  
12 association, or from the operator of the hotel, in  
13 amounts equal to and which are disbursed by the  
14 operator or suboperator for employee wages, salaries,  
15 payroll taxes, insurance premiums, and benefits,  
16 including retirement, vacation, sick pay, and health  
17 benefits. As used in this paragraph:

1           "Employee" means employees directly engaged in  
2           the day-to-day operation of the hotel and employed by  
3           the operator or suboperator.

4           "Hotel" means an operation as defined in section  
5           445-90 or a time share plan as defined in section  
6           514E-1.

7           "Operator" means any person who, pursuant to a  
8           written contract with the owner of a hotel or time  
9           share association, operates or manages the hotel for  
10          the owner or time share association.

11          "Owner" means the fee owner or lessee under a  
12          recorded lease of a hotel.

13          "Suboperator" means any person who, pursuant to a  
14          written contract with the operator, operates or  
15          manages the hotel as a subcontractor of the operator.

16          "Time share association" means an "association"  
17          as that term is defined in section 514E-1;

18          (2) Amounts received by the operator of a county  
19          transportation system operated under an operating  
20          contract with a political subdivision, where the  
21          political subdivision is the owner of the county  
22          transportation system. As used in this paragraph:

1 "County transportation system" means a mass  
2 transit system of motorized buses providing regularly  
3 scheduled transportation within a county.

4 "Operating contract" or "contract" means a  
5 contract to operate and manage a political  
6 subdivision's county transportation system, which  
7 provides that:

8 (A) The political subdivision shall exercise  
9 substantial control over all aspects of the  
10 operator's operation;

11 (B) The political subdivision controls the  
12 development of transit policy, service  
13 planning, routes, and fares; and

14 (C) The operator develops in advance a draft  
15 budget in the same format as prescribed for  
16 agencies of the political subdivision. The  
17 budget must be subject to the same  
18 constraints and controls regarding the  
19 lawful expenditure of public funds as any  
20 public sector agency, and deviations from  
21 the budget must be subject to approval by

1                   the appropriate political subdivision  
2                   officials involved in the budgetary process.

3                   "Operator" means any person who, pursuant to an  
4                   operating contract with a political subdivision,  
5                   operates or manages a county transportation system.

6                   "Owner" means a political subdivision that owns  
7                   or is the lessee of all the properties and facilities  
8                   of the county transportation system (including buses,  
9                   real estate, parking garages, fuel pumps, maintenance  
10                  equipment, office supplies, etc.), and that owns all  
11                  revenues derived therefrom;

12               (3) Surcharge taxes on rental motor vehicles imposed by  
13               chapter 251 and passed on and collected by persons  
14               holding certificates of registration under that  
15               chapter;

16               (4) Amounts received by the operator of orchard properties  
17               from the owner of the orchard property in amounts  
18               equal to and which are disbursed by the operator for  
19               employee wages, salaries, payroll taxes, insurance  
20               premiums, and benefits, including retirement,  
21               vacation, sick pay, and health benefits. As used in  
22               this paragraph:

1           "Employee" means an employee directly engaged in  
2           the day-to-day operations of the orchard properties  
3           and employed by the operator.

4           "Operator" means a producer who, pursuant to a  
5           written contract with the owner of the orchard  
6           property, operates or manages the orchard property for  
7           the owner where the property contains an area  
8           sufficient to make the undertaking economically  
9           feasible.

10          "Orchard property" means any real property that  
11          is used to raise trees with a production life cycle of  
12          fifteen years or more producing fruits or nuts having  
13          a normal period of development from the initial  
14          planting to the first commercially saleable harvest of  
15          not less than three years.

16          "Owner" means a fee owner or lessee under a  
17          recorded lease of orchard property;

18          (5) Taxes on nursing facility income imposed by chapter  
19          346E and passed on and collected by operators of  
20          nursing facilities;

21          (6) Amounts received under property and casualty insurance  
22          policies for damage or loss of inventory used in the

1           conduct of a trade or business located within the  
2           State or a portion thereof that is declared a natural  
3           disaster area by the governor pursuant to section 209-  
4           2;

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

11          (8) Interest received by a person domiciled outside the  
12          State from a trust company (as defined in section  
13          412:8-101) acting as payment agent or trustee on  
14          behalf of the issuer or payees of an interest bearing  
15          instrument or obligation, if the interest would not  
16          have been subject to tax under this chapter if paid  
17          directly to the person domiciled outside the State  
18          without the use of a paying agent or trustee; provided  
19          that if the interest would otherwise be taxable under  
20          this chapter if paid directly to the person domiciled  
21          outside the State, it shall not be exempt solely

1 because of the use of a Hawaii trust company as a  
2 paying agent or trustee;

3 (9) Amounts received by a management company from related  
4 entities engaged in the business of selling interstate  
5 or foreign common carrier telecommunications services  
6 in amounts equal to and which are disbursed by the  
7 management company for employee wages, salaries,  
8 payroll taxes, insurance premiums, and benefits,  
9 including retirement, vacation, sick pay, and health  
10 benefits. As used in this paragraph:

11 "Employee" means employees directly engaged in  
12 the day-to-day operation of related entities engaged  
13 in the business of selling interstate or foreign  
14 common carrier telecommunications services and  
15 employed by the management company.

16 "Management company" means any person who,  
17 pursuant to a written contract with a related entity  
18 engaged in the business of selling interstate or  
19 foreign common carrier telecommunications services,  
20 provides managerial or operational services to that  
21 entity.

22 "Related entities" means:

- 1 (A) An affiliated group of corporations within  
2 the meaning of section 1504 (with respect to  
3 affiliated group defined) of the federal  
4 Internal Revenue Code of 1986, as amended;
- 5 (B) A controlled group of corporations within  
6 the meaning of section 1563 (with respect to  
7 definitions and special rules) of the  
8 federal Internal Revenue Code of 1986, as  
9 amended;
- 10 (C) Those entities connected through ownership  
11 of at least eighty per cent of the total  
12 value and at least eighty per cent of the  
13 total voting power of each such entity (or  
14 combination thereof), including  
15 partnerships, associations, trusts, S  
16 corporations, nonprofit corporations,  
17 limited liability partnerships, or limited  
18 liability companies; and
- 19 (D) Any group or combination of the entities  
20 described in paragraph (C) constituting a  
21 unitary business for income tax purposes;



1           whether or not the entity is located within or without  
2           the State or licensed under this chapter; [~~and~~]

3           (10) Amounts received as grants under section 206M-15[~~-~~];  
4           and

5           (11) Notwithstanding section 237-23.5, amounts received by  
6           one related person from another related person;  
7           provided that any amount shall only include the actual  
8           amount of payroll, payroll taxes, employee benefits,  
9           and other administrative and overhead expenses. For  
10           the purposes of this paragraph, "related person" means  
11           persons falling within a relationship set forth under  
12           Section 267(b) of the federal Internal Revenue Code."

13           SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15           SECTION 4. This Act shall take effect on July 1, 2090;  
16 provided that the amendments made to section 237-24.7, Hawaii  
17 Revised Statutes, by this Act shall not be repealed when that  
18 section is repealed and reenacted on December 31, 2009, by  
19 section 4 of Act 239, Session Laws of Hawaii 2007.

**Report Title:**

Common Paymaster For Related Persons; General Excise Tax  
Exemption

**Description:**

Exempts from the general excise tax, amounts received by a  
common paymaster to pay employees of two or more related  
businesses, on behalf of the related businesses, where the  
applicable relationship is defined under Section 267(b) of the  
Internal Revenue Code. Effective 7/1/90. (SD1)