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# A BILL FOR AN ACT

RELATING TO PROFESSIONAL EMPLOYMENT ORGANIZATIONS.

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

1           SECTION 1. The purpose of this Act is to eliminate unfair  
2 taxation for those Hawaii businesses that may realize added  
3 efficiency and cost-effectiveness by contracting payroll and  
4 payroll-related functions. Since the contracting company  
5 renders general excise tax payments, it is appropriate to exempt  
6 the organization under such contract from further taxation on  
7 the same payroll moneys. The general excise tax would apply to  
8 the fee for the performance of the contracted services. The  
9 advantages of this rapidly growing trend on the mainland have  
10 not been well used in Hawaii because the taxation on payroll  
11 pass-through moneys can be substantially more than the fee for  
12 those services.

13           This tax exemption has precedent in Hawaii law, such as in  
14 the operation of hotels, where management companies are  
15 reimbursed by hotels for similar payroll and related functions.

16           SECTION 2. The Hawaii Revised Statutes is amended by  
17 adding a new chapter to be appropriately designated and to read  
18 as follows:



1 "CHAPTER

2 PROFESSIONAL EMPLOYMENT ORGANIZATIONS

3 § -1 Definitions. As used in this chapter, unless the  
4 context otherwise requires:

5 "Assigned employee" means an employee under a professional  
6 employment organization arrangement whose work is performed in  
7 the State. The term does not include an employee hired to  
8 support or supplement a client company's work force as temporary  
9 help. "Assigned employee" means the same as the term "leased  
10 employee" as defined in section 414(n) (with respect to employee  
11 leasing) of the Internal Revenue Code of 1986, as amended.

12 "Client company" means a person that contracts with a  
13 professional employment organization and is assigned employees  
14 by the professional employment organization under that contract.

15 "Professional employment organization" means a business  
16 entity that offers to co-employ employees that are assigned to  
17 the work sites of its client companies.

18 "Professional employment organization services" means an  
19 arrangement by which co-employees of a professional employment  
20 organization are assigned to work at the client company and the  
21 assigned employee's assignment is intended to be of a long-term



1 or continuing nature, rather than temporary. The term does not  
2 include temporary help.

3 "Temporary help" means an arrangement by which an  
4 organization hires its own employees and assigns them to a  
5 client company to support or supplement the client's work force  
6 in a special situation, including:

- 7 (1) An employee absence;
- 8 (2) A temporary skill shortage;
- 9 (3) A seasonal workload; or
- 10 (4) A special assignment or project.

11 § -2 Professional employment organization; employee  
12 rights; payroll cost exemption. (a) Where any client company  
13 uses the services of assigned employees or co-employs assigned  
14 employees with a professional employment organization, the  
15 client company and the professional employment organization,  
16 with respect to the assigned employees, shall not be exempt from  
17 the requirements of any federal, state, or county law, including  
18 labor or employment laws, collective bargaining rights, anti-  
19 discrimination provisions, or other laws with respect to the  
20 protection and rights of employees, including chapters 377 and  
21 378, that would apply to the assigned employees if the assigned



1 employees had been employees of the client company instead of  
2 co-employees of the professional employment organization.

3       These employee rights shall not be abrogated by any  
4 contract or agreement between the client company and the  
5 professional employment organization, or the professional  
6 employment organization and the assigned employee, which  
7 contains terms or conditions that could not be lawfully  
8 contained in a contract or agreement directly between the client  
9 company and the assigned employees, if no professional  
10 employment organization was involved. Notwithstanding any  
11 statute, local ordinance, executive order, rule, or regulation  
12 to the contrary, where the laws, rights, and protections  
13 referred to in this section define or require a determination of  
14 the "employer", the employer shall be deemed to be the client  
15 company and not the professional employment organization. The  
16 department of labor and industrial relations shall notify the  
17 department of taxation in writing of any violation of this  
18 subsection.

19       (b) The client company shall be deemed to have satisfied  
20 its obligations with respect to any assigned employees under any  
21 applicable law, including, without limitation, workers'  
22 compensation laws, including chapter 386, employee insurance



1 coverage, including chapters 383, 385, 392, and 393, and tax  
2 withholding and reporting laws, if and to the extent that those  
3 obligations are satisfied by the professional employment  
4 organization acting in its capacity as co-employer of such  
5 assigned employees.

6 (c) Amounts received by a professional employment  
7 organization from a client company in amounts equal to and that  
8 are disbursed by the professional employment organization for  
9 employee wages, salaries, payroll taxes, insurance premiums, and  
10 benefits, including retirement, vacation, sick leave, health  
11 benefits, and similar employment benefits with respect to  
12 assigned employees at a client company shall not be subject to  
13 the general excise tax as provided by section 237-24.75.

14 (d) The general excise tax exemption under section  
15 237-24.75 shall not apply to the professional employment  
16 organization if:

17 (1) By or through any contract between the client company  
18 and any professional employment organization, or  
19 otherwise, employees are excluded from any employee  
20 rights or employee benefits required by law to be  
21 provided to employees of the client company by the  
22 client company; or



1 (2) The professional employment organization fails to pay  
2 any tax withholding for co-employees or any federal or  
3 state taxes for which the professional employment  
4 organization is responsible."

5 SECTION 3. Section 237-24.75, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 " ~~[§]~~237-24.75 ~~[§]~~ Additional exemptions. In addition to  
8 the amounts exempt under section 237-24, this chapter shall not  
9 apply to amounts received ~~[as]~~;

- 10 (1) As a beverage container deposit collected under  
11 chapter 342G, part VIII[-]; and
- 12 (2) By a professional employment organization from a  
13 client company equal to amounts that are disbursed by  
14 the professional employment organization for employee  
15 wages, salaries, payroll taxes, insurance premiums,  
16 and benefits, including retirement, vacation, sick  
17 leave, health benefits, and similar employment  
18 benefits with respect to assigned employees at a  
19 client company; provided that this exemption shall not  
20 apply to a professional employment organization upon  
21 failure of the professional employment organization to  
22 pay any tax withholding for assigned employees or any



1           federal or state taxes for which the professional  
2           employment organization is responsible. As used in  
3           this paragraph, "professional employment  
4           organization", "client company", and "assigned  
5           employee" shall have the meanings as provided in  
6           section       -1."

7           SECTION 4. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9           SECTION 5. This Act shall take effect on July 1, 2020, and  
10 shall apply to taxable years beginning after December 31, 2020.



**Report Title:**

GET; Exemption; Professional Employment Organization

**Description:**

Exempts from the general excise tax amounts that a client company pays to a professional employment organization that will be expended to pay the wages, salaries, payroll taxes, and benefits of the employees hired by a client company; provides that the exemption shall not apply if the professional employment organization has failed to pay any tax withholding or any federal or state taxes. (SD1)

