
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 has not
10 been well utilized 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. Chapter 237, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:



1 "§237- Professional employment organization payroll

2 cost exemption. (a) As used in this section:

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

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

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

16 "Professional employment organization services" means an
17 arrangement by which co-employees of a professional employment
18 organization are assigned to work at the client company and such
19 assigned employee's assignment is intended to be of a long-term
20 or continuing nature, rather than temporary. The term does not
21 include temporary help.



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

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

9 (b) This chapter shall not apply to amounts received by a
10 professional employment organization from a client company that
11 is disbursed by the professional employment organization for
12 employee wages, salaries, payroll taxes, insurance premiums, and
13 benefits, including retirement, vacation, sick leave, health
14 benefits and similar employment benefits with respect to
15 assigned employees at a client company.

16 (c) Where any client company of any professional
17 employment organization uses the services of assigned employees
18 or co-employs with a professional employment organization, the
19 client company and the professional employment organization,
20 with respect to such assigned employees, shall not be exempt
21 from the requirements of any federal, state, or county law,
22 including labor or employment laws, collective bargaining



1 rights, anti-discrimination provisions, or other laws with
2 respect to the protection and rights of employees, including
3 chapters 377 and chapter 378, that would apply to such assigned
4 employees if such assigned employees had been employees of the
5 client company instead of the co-employees of the professional
6 employment organization.

7 These rights shall not be abrogated by any contract or
8 agreement between the client company and the professional
9 employment organization, or the professional employment
10 organization and the assigned employee, that contains terms or
11 conditions which could not be lawfully contained in a contract
12 or agreement directly between the client company and the
13 assigned employees, if no professional employment organization
14 was involved. Any contrary statute, local ordinance, executive
15 order, or regulation notwithstanding, where the laws, rights,
16 and protections referred to in this section define or require a
17 determination of the "employer", the employer shall be deemed to
18 be the client company and not the professional employment
19 organization.

20 (d) The client company shall be deemed to have satisfied
21 its obligations with respect to any such assigned employees
22 under any applicable law, including, without limitation, workers



1 compensation laws including chapter 386, employee insurance
2 coverage, including chapters 383, 385, 392, and 393, and tax
3 withholding and reporting laws, if and to the extent that those
4 obligations are satisfied by the professional employment
5 organization acting in its capacity as co-employer of such
6 assigned employees.

7 (e) If, by or through any contract between the client
8 company and any professional employment organization, or
9 otherwise, employees are excluded from any employee rights or
10 employee benefits required by law to be provided to employees of
11 the client company by the client company, the exemption under
12 this section shall not be applicable. Written notification of
13 any violation of this section to the department by any union or
14 the department of labor and industrial relations shall be
15 sufficient to make this exemption inapplicable.

16 (f) Failure of the professional employment organization to
17 pay any tax withholding for co-employees or any federal or state
18 taxes for which the professional employment organization is
19 responsible shall immediately rescind the exemption under this
20 section."

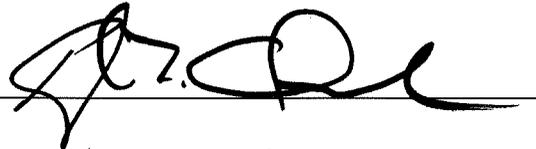
21 SECTION 3. New statutory material is underscored.



H.B. NO. 317

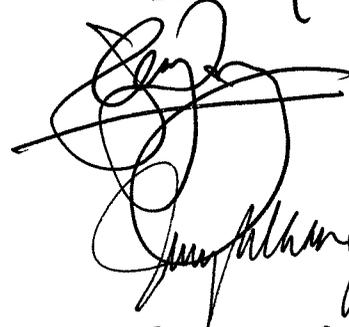
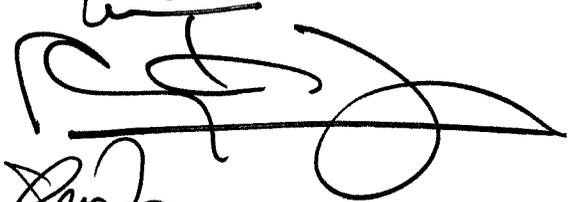
1 SECTION 4. This Act shall take effect July 1, 2007, and
2 shall apply to taxable years beginning after December 31, 2006.
3

INTRODUCED BY:



Fono Choy

By a joint



J. R. Karaman

Michael J. Meyer

By a joint
Calvin H. By

JAN 18 2007



Report Title:

GET; Exemption; Professional Employment Organization

Description:

Exempts from the General Excise Tax amounts paid to a professional employment organization on behalf of employees hired by a client company. Ensures rights of employees.

