
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:

HB317 HD1 HMS 2007-1755



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) of the Internal Revenue
11 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 such
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 of any professional employment organization uses the services of
14 assigned employees or co-employs with a professional employment
15 organization, the client company and the professional employment
16 organization, with respect to such assigned employees, shall not
17 be exempt from the requirements of any federal, state, or county
18 law, including labor or employment laws, collective bargaining
19 rights, anti-discrimination provisions, or other laws with
20 respect to the protection and rights of employees, including
21 chapters 377 and 378, that would apply to such assigned
22 employees if such assigned employees had been employees of the



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

18 (b) The client company shall be deemed to have satisfied
19 its obligations with respect to any such assigned employees
20 under any applicable law, including, without limitation,
21 workers' compensation laws, including chapter 386, employee
22 insurance coverage, including chapters 383, 385, 392, and 393,



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

5 (c) Amounts received by a professional employment
6 organization from a client company in amounts equal to and that
7 are disbursed by the professional employment organization for
8 employee wages, salaries, payroll taxes, insurance premiums, and
9 benefits, including retirement, vacation, sick leave, health
10 benefits, and similar employment benefits with respect to
11 assigned employees at a client company shall not be subject to
12 the general excise tax as provided by section 237-24.7(10).

13 (d) The general excise tax exemption under section 237-
14 24.7(10) shall not apply to the professional employment
15 organization if:

16 (1) By or through any contract between the client company
17 and any professional employment organization, or
18 otherwise, employees are excluded from any employee
19 rights or employee benefits required by law to be
20 provided to employees of the client company by the
21 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 237-24.7, Hawaii Revised Statutes, is
 6 amended to read as follows:

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

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

16 "Employee" means employees directly engaged in
 17 the day-to-day operation of the hotel and employed by
 18 the operator.

19 "Hotel" means an operation as defined in section
 20 445-90.



1 "Operator" means any person who, pursuant to a
2 written contract with the owner of a hotel, operates
3 or manages the hotel for the owner.

4 "Owner" means the fee owner or lessee under a
5 recorded lease of a hotel;

6 (2) Amounts received by the operator of a county
7 transportation system operated under an operating
8 contract with a political subdivision, where the
9 political subdivision is the owner of the county
10 transportation system. As used in this paragraph:

11 "County transportation system" means a mass
12 transit system of motorized buses providing regularly
13 scheduled transportation within a county.

14 "Operating contract" or "contract" means a
15 contract to operate and manage a political
16 subdivision's county transportation system, which
17 provides that:

18 (A) The political subdivision shall exercise
19 substantial control over all aspects of the
20 operator's operation;



1 (B) The political subdivision controls the
2 development of transit policy, service
3 planning, routes, and fares; and
4 (C) The operator develops in advance a draft
5 budget in the same format as prescribed for
6 agencies of the political subdivision. The
7 budget must be subject to the same
8 constraints and controls regarding the
9 lawful expenditure of public funds as any
10 public sector agency, and deviations from
11 the budget must be subject to approval by
12 the appropriate political subdivision
13 officials involved in the budgetary process.

14 "Operator" means any person who, pursuant to an
15 operating contract with a political subdivision,
16 operates or manages a county transportation system.

17 "Owner" means a political subdivision that owns
18 or is the lessee of all the properties and facilities
19 of the county transportation system (including buses,
20 real estate, parking garages, fuel pumps, maintenance
21 equipment, office supplies, etc.), and that owns all
22 revenues derived therefrom;



1 (3) Surcharge taxes on rental motor vehicles imposed by
 2 chapter 251 and passed on and collected by persons
 3 holding certificates of registration under that
 4 chapter;

5 (4) Amounts received by the operator of orchard properties
 6 from the owner of the orchard property in amounts
 7 equal to and which are disbursed by the operator for
 8 employee wages, salaries, payroll taxes, insurance
 9 premiums, and benefits, including retirement,
 10 vacation, sick pay, and health benefits. As used in
 11 this paragraph:

12 "Employee" means an employee directly engaged in
 13 the day-to-day operations of the orchard properties
 14 and employed by the operator.

15 "Operator" means a producer who, pursuant to a
 16 written contract with the owner of the orchard
 17 property, operates or manages the orchard property for
 18 the owner where the property contains an area
 19 sufficient to make the undertaking economically
 20 feasible.

21 "Orchard property" means any real property that
 22 is used to raise trees with a production life cycle of



1 fifteen years or more producing fruits or nuts having
2 a normal period of development from the initial
3 planting to the first commercially saleable harvest of
4 not less than three years.

5 "Owner" means a fee owner or lessee under a
6 recorded lease of orchard property;

7 (5) Taxes on nursing facility income imposed by chapter
8 346E and passed on and collected by operators of
9 nursing facilities;

10 (6) Amounts received under property and casualty insurance
11 policies for damage or loss of inventory used in the
12 conduct of a trade or business located within the
13 State or a portion thereof that is declared a natural
14 disaster area by the governor pursuant to section 209-
15 2;

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



- 1 (8) Interest received by a person domiciled outside the
2 State from a trust company (as defined in section
3 412:8-101) acting as payment agent or trustee on
4 behalf of the issuer or payees of an interest bearing
5 instrument or obligation, if the interest would not
6 have been subject to tax under this chapter if paid
7 directly to the person domiciled outside the State
8 without the use of a paying agent or trustee; provided
9 that if the interest would otherwise be taxable under
10 this chapter if paid directly to the person domiciled
11 outside the State, it shall not be exempt solely
12 because of the use of a Hawaii trust company as a
13 paying agent or trustee;
- 14 (9) Amounts received by a management company from related
15 entities engaged in the business of selling interstate
16 or foreign common carrier telecommunications services
17 in amounts equal to and which are disbursed by the
18 management company for employee wages, salaries,
19 payroll taxes, insurance premiums, and benefits,
20 including retirement, vacation, sick pay, and health
21 benefits. As used in this paragraph:



1 "Employee" means employees directly engaged in
2 the day-to-day operation of related entities engaged
3 in the business of selling interstate or foreign
4 common carrier telecommunications services and
5 employed by the management company.

6 "Management company" means any person who,
7 pursuant to a written contract with a related entity
8 engaged in the business of selling interstate or
9 foreign common carrier telecommunications services,
10 provides managerial or operational services to that
11 entity.

12 "Related entities" means:

13 (A) An affiliated group of corporations within
14 the meaning of section 1504 (with respect to
15 affiliated group defined) of the federal
16 Internal Revenue Code of 1986, as amended;

17 (B) A controlled group of corporations within
18 the meaning of section 1563 (with respect to
19 definitions and special rules) of the
20 federal Internal Revenue Code of 1986, as
21 amended;



1 (C) Those entities connected through ownership
 2 of at least eighty per cent of the total
 3 value and at least eighty per cent of the
 4 total voting power of each such entity (or
 5 combination thereof), including
 6 partnerships, associations, trusts, S
 7 corporations, nonprofit corporations,
 8 limited liability partnerships, or limited
 9 liability companies; and

10 (D) Any group or combination of the entities
 11 described in paragraph (C) constituting a
 12 unitary business for income tax purposes;
 13 whether or not the entity is located within or without
 14 the State or licensed under this chapter; [~~and~~]

15 (10) Amounts received by a professional employment
 16 organization from a client company in amounts equal to
 17 and that are disbursed by the professional employment
 18 organization for employee wages, salaries, payroll
 19 taxes, insurance premiums, and benefits, including
 20 retirement, vacation, sick leave, health benefits, and
 21 similar employment benefits with respect to assigned
 22 employees at a client company; provided that this



1 exemption shall be inapplicable to a professional
2 employment organization upon:

3 (A) Written notification by any union or the
4 department of labor and industrial relations of
5 any violation by the professional employment
6 organization of section -2(a); or

7 (B) Failure of the professional employment
8 organization to pay any tax withholding for
9 assigned employees or any federal or state taxes
10 for which the professional employment
11 organization is responsible.

12 As used in this paragraph, "professional employment
13 organization", "client company", and "assigned
14 employee" shall have the meanings as provided in
15 section -1; and

16 [~~10~~] (11) Amounts received as grants under section 206M-
17 15."

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 5. This Act shall take effect on July 1, 2007, and
21 shall apply to taxable years beginning after December 31, 2006.



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. Protects the rights of employees. (HB317 HD1)

