

ACT 214

S.B. NO. 3075

A Bill for an Act Relating to General Excise Tax.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to exempt from the general excise tax amounts received by a management company as reimbursements of payroll costs incurred in managing or operating related entities selling telecommunications services.

Similar exemptions are already provided for in the case of amounts received from the owners by the operators of hotels and orchards in reimbursement of operational employee payroll costs (section 237-24.7, Hawaii Revised Statutes). It is important that the same exemption be extended to telecommunications businesses, because of the highly mobile nature of telecommunications jobs. Also, the general excise tax was never intended to serve, in effect, as a tax on payrolls.

This Act tells mainland telecommunications businesses that Hawaii wants and appreciates the high technology jobs that they provide to our citizens. It reassures these companies that Hawaii will not penalize them for organizing their operations into related entities which together provide Hawaii employment, Hawaii employee benefits, and telecommunications services, all in accordance with Hawaii law. In doing so, the Act removes an impediment to economic development and to the expansion and retention of employment opportunities in the telecommunications industry in Hawaii.

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

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

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

“Employee” means employees directly engaged in the day to day operation of the hotel and employed by the operator.

“Hotel” means an operation licensed under section 445-92.

“Operator” means any person who, pursuant to a written contract with the owner of a hotel, operates or manages the hotel for the owner.

“Owner” means the fee owner or lessee under a recorded lease of a hotel;

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

“County transportation system” means a mass transit system of motorized buses providing regularly scheduled transportation within a county.

“Operating contract” or “contract” means a contract to operate and manage a political subdivision’s county transportation system, which provides that:

- (A) The political subdivision shall exercise substantial control over all aspects of the operator’s operation;
- (B) The political subdivision controls the development of transit policy, service planning, routes, and fares; and
- (C) The operator develops in advance a draft budget in the same format as prescribed for agencies of the political subdivision. The budget must be subject to the same constraints and controls regarding the lawful expenditure of public funds as any public sector agency, and deviations from the budget must be subject to approval by the appropriate political subdivision officials involved in the budgetary process.

“Operator” means any person who, pursuant to an operating contract with a political subdivision, operates or manages a county transportation system.

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

- (3) Surcharge taxes on rental motor vehicles imposed by chapter 251 and passed on and collected by persons holding certificates of registration under that chapter;
- (4) Amounts received by the operator of orchard properties from the owner of the orchard property in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

“Employee” means an employee directly engaged in the day to day operations of the orchard properties and employed by the operator.

“Operator” means a producer who, pursuant to a written contract with the owner of the orchard property, operates or manages the orchard property for the owner where the property contains an area sufficient to make the undertaking economically feasible.

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

“Owner” means a fee owner or lessee under a recorded lease of orchard property;

- (5) Taxes on nursing facility income imposed by chapter 346E and passed on and collected by operators of nursing facilities;
- (6) Amounts received under property and casualty insurance policies for damage or loss of inventory used in the conduct of a trade or business located within the State or a portion thereof that is declared a natural disaster area by the governor pursuant to section 209-2;
- (7) Amounts received as compensation by community organizations, school booster clubs, and nonprofit organizations under a contract with

the chief election officer for the provision and compensation of precinct officials and other election related personnel, services, and activities, pursuant to section 11-5; [and]

- (8) Interest received by a person domiciled outside the State from a trust company (as defined in section 412:8-101) acting as payment agent or trustee on behalf of the issuer or payees of an interest bearing instrument or obligation, if the interest would not have been subject to tax under this chapter if paid directly to the person domiciled outside the State without the use of a paying agent or trustee; provided that if the interest would otherwise be taxable under this chapter if paid directly to the person domiciled outside the State it shall not be exempt solely because of the use of a Hawaii trust company as a paying agent or trustee[.]; and

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

“Employee” means employees directly engaged in the day-to-day operation of related entities engaged in the business of selling interstate or foreign common carrier telecommunications services and employed by the management company.

“Management company” means any person who, pursuant to a written contract with a related entity engaged in the business of selling interstate or foreign common carrier telecommunications services, provides managerial or operational services to that entity.

“Related entities” means:

- (A) An affiliated group of corporations within the meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended;
- (B) A controlled group of corporations within the meaning of section 1563 (with respect to definitions and special rules) of the federal Internal Revenue Code of 1986, as amended; or
- (C) Those entities connected through ownership of at least eighty per cent of the total value of each such entity, including partnerships, associations, trusts, S corporations, nonprofit corporations, or any other group or combination of these or other tax entities acting as a business unit;  
whether or not the entity is located within or without the State or licensed under this chapter.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1998, and shall apply to gross income or gross proceeds received after June 30, 1998.

(Approved July 17, 1998.)