
A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAX.

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

1 SECTION 1. Of all sources of state revenues, the general
2 excise tax accounts for over fifty per cent of state revenue
3 realizations. Generally, the general excise tax is an efficient
4 tax assessed on businesses for the privilege of doing business
5 in Hawaii. The general excise tax's efficiency stems from its
6 broad-based application throughout the economy, coupled with its
7 low rate.

8 Over time, the general excise tax's efficiency has been
9 diminished due to the routine addition of tax exemptions for
10 particular businesses or industries. A majority of these
11 exemptions allow businesses that are otherwise very profitable
12 to avoid paying the general excise tax altogether. Because some
13 businesses pay no tax, they often do not register to do business
14 in Hawaii or file tax returns. Furthermore, out-of-state
15 businesses that claim exemption from the general excise tax also
16 fail to register, file, or otherwise expressly declare the
17 exemption. This lack of data on businesses operating in Hawaii
18 greatly undermines the department of taxation's ability to



1 gather information on businesses claiming tax benefits.
2 Requiring businesses to be "on the radar" of the department of
3 taxation will greatly assist in tax administration by providing
4 valuable information that the State may use in compliance
5 efforts.

6 Disallowing any general excise tax benefits unless basic
7 information is filed is rational and justifiable, especially
8 when tax benefits are a matter of legislative grace. In a time
9 when tax incentives are reviewed with scrutiny by policymakers
10 and administrators, it is important to ensure that businesses do
11 not avoid government tax-benefit oversight by assuming that
12 filing is unnecessary when no tax is due as a result of tax
13 benefits. Even when no tax is due, officials should have all
14 necessary data and information about persons conducting business
15 in Hawaii to test the effectiveness of the tax system and
16 accurately account for those that enjoy exemptions from it.

17 Additionally, though the general excise tax is a tax on
18 businesses, Hawaii businesses are allowed by law to pass on
19 their general excise tax costs to customers as a cost recovery.
20 However, as the economy has declined, more businesses have
21 failed to pay their general excise tax, even though the tax is
22 still visibly passed on to Hawaii consumers under the guise that



1 it would be paid to the government. Businesses that do not
2 timely remit the tax recovery amount are known to use these
3 funds to pay operating expenses, and some disreputable
4 businesses pocket these funds with no intention of paying their
5 taxes. In short, the practice of increasing consumer costs
6 under the pretext of tax recovery now becomes a consumer-
7 protection matter, and businesses should be liable for paying
8 those tax recovery amounts owed to the State. Especially since
9 more businesses are keeping these tax recovery amounts to cover
10 costs during this economic downturn, the government inevitably
11 becomes the last creditor to be paid.

12 To restore efficiency in Hawaii's general excise tax,
13 without increasing the tax rate, repealing exemptions, or
14 placing additional burdens on businesses other than what is fair
15 and reasonable, this Act strengthens the general excise tax by
16 requiring all businesses that enjoy excise tax exemptions to
17 register to do business in Hawaii, timely file their tax
18 returns, as well as expressly claim their entitlement. These
19 requirements ensure that the proper information is conveyed to
20 the State to monitor a tax exemption's cost and effectiveness.
21 Additionally, this Act creates a personal trust fund liability
22 for businesses that use the general excise tax as the basis for



1 increasing their prices and ensures those funds are paid to the
2 State for the benefit of consumers and businesses.

3 SECTION 2. Chapter 237, Hawaii Revised Statutes, is
4 amended by adding two new sections to be appropriately
5 designated and to read as follows:

6 "§237- General excise tax benefits; mandatory denial of
7 tax benefits for failure to properly claim. (a)

8 Notwithstanding any other law to the contrary, a person shall
9 not be entitled to any general excise tax benefit under this
10 chapter unless the person claiming the general excise tax
11 benefit:

12 (1) Obtains a license to engage in and conduct business as
13 required under section 237-9;

14 (2) Files a tax return as provided under this chapter or
15 chapter 231 not later than twelve months from the due
16 date prescribed for the return; and

17 (3) Expressly claims the general excise tax benefit on
18 forms prescribed by the director of taxation.

19 (b) The director may require any taxpayer to furnish
20 information to ascertain the validity of any general excise tax
21 benefit and may adopt rules pursuant to chapter 91 necessary to
22 effectuate the purposes of this section.

1 (c) A taxpayer shall not be denied a general excise tax
2 benefit for failing to comply with subsection (a) if:

3 (1) The provisions of the United States Constitution or
4 laws of the United States prohibit the requirements;
5 or

6 (2) The State does not otherwise have the power to impose
7 the requirements.

8 (d) The director may waive the denial of the general
9 excise tax benefit under subsection (a) if the failure to comply
10 is due to reasonable cause and not to the wilful neglect of the
11 taxpayer.

12 (e) Nothing in this section shall be interpreted as
13 limiting the application of section 237-22 in computing the tax
14 imposed under this chapter.

15 (f) This section shall not apply to:

16 (1) Amounts received that are exempt under section 237-
17 24(1) through (7);

18 (2) Amounts received by persons exempt under section 237-
19 23(a)(3) through (6); provided that such person is
20 exempt from filing federal Internal Revenue Service
21 Form 990 or Form 990-EZ; and



1 (3) Any other amounts, persons, or transactions as
2 determined by the director in the best interest of tax
3 administration made by official pronouncement.

4 (g) For purposes of this section, "general excise tax
5 benefit" means any tax exemption, exclusion of a taxable amount,
6 a reduction from the measure of a tax imposed, a tax deduction,
7 a tax credit, a lower rate of tax, a segregation or division of
8 taxable amounts between multiple taxpayers involved in the same
9 transaction, or any income splitting allowed under this chapter.

10 §237- Certain amounts held in trust; liability of key
11 individuals. (a) There shall be personal liability for the
12 taxes imposed under this chapter as provided in this section for
13 the following amounts of gross income or gross proceeds:

14 (1) Any amount collected as a recovery of the taxpayer's
15 liability under this chapter, where the amount is
16 passed on as the tax owed by the taxpayer under this
17 chapter for the transaction and is separately stated
18 or accounted for in a receipt, contract, invoice,
19 billing, or other evidence of the business activity;
20 or

21 (2) An amount equal to an imputed tax liability under this
22 chapter on a transaction where a taxpayer does not



1 separately state or account for the amount as a tax
2 recovery as provided in paragraph (1). For purposes
3 of this paragraph, the amount of the imputed tax
4 liability is the result of multiplying the gross
5 income or gross proceeds received in the transaction
6 by the tax rate.

7 The amounts under paragraphs (1) and (2) shall be held in trust
8 for the benefit of the State and for payment to the State in the
9 manner and at the time required by this chapter.

10 (b) The personal liability under this section applies to
11 any officer, member, manager, or other person having control or
12 supervision over amounts of gross proceeds or gross income
13 collected for the purpose of payment of the general excise tax
14 and held in trust under subsection (a), or who is charged with
15 the responsibility for the filing of returns or the payment of
16 general excise tax on gross income or gross proceeds collected
17 and held in trust under subsection (a). The person shall be
18 personally liable for any unpaid taxes and interest and
19 penalties on those taxes, if such officer or other person
20 wilfully fails to pay or to cause to be paid any taxes due from
21 the taxpayer pursuant to this chapter.



1 For purposes of this subsection, "wilfully fails to pay or
2 to cause to be paid" shall be construed in accordance with
3 judicial interpretations given to similar provisions of the
4 Internal Revenue Code; consistent therewith, the term "wilfully"
5 shall mean a voluntary, intentional violation of a known legal
6 duty.

7 (c) An officer, member, manager, or other responsible
8 person shall be liable only for general excise taxes on gross
9 income or gross proceeds collected, plus interest and penalties
10 on those taxes, that became due during the period the person had
11 control, supervision, responsibility, or a duty to act for the
12 taxpayer as described in subsection (b) of this section.

13 (d) Persons liable under subsection (b) are exempt from
14 liability when nonpayment of the general excise tax on gross
15 income or gross proceeds held in trust is for good cause as
16 determined by the director.

17 (e) The voluntary or involuntary dissolution of the
18 taxpayer or the withdrawal or surrender of its right to engage
19 in business in this state shall not discharge the liability
20 hereby imposed."

21 SECTION 3. Section 46-15.1, Hawaii Revised Statutes, is
22 amended by amending subsections (a) and (b) to read as follows:



1 "(a) Any law to the contrary notwithstanding, any county
2 shall have and may exercise the same powers, subject to
3 applicable limitations, as those granted the Hawaii housing
4 finance and development corporation pursuant to chapter 201H
5 insofar as those powers may be reasonably construed to be
6 exercisable by a county for the purpose of developing,
7 constructing, and providing low- and moderate-income housing;
8 provided that no county shall be empowered to cause the State to
9 issue general obligation bonds to finance a project pursuant to
10 this section; provided further that county projects shall be
11 granted an exemption from general excise or receipts and use
12 taxes in the same manner as projects of the Hawaii housing
13 finance and development corporation pursuant to [~~section~~]
14 sections 201H-36[+], 237-29, and 238-3(j) and the rules adopted
15 thereunder; and provided further that section 201H-16 shall not
16 apply to this section unless federal guidelines specifically
17 provide local governments with that authorization and the
18 authorization does not conflict with any state laws. The powers
19 shall include the power, subject to applicable limitations, to:
20 (1) Develop and construct dwelling units, alone or in
21 partnership with developers;



- 1 (2) Acquire necessary land by lease, purchase, exchange,
2 or eminent domain;
- 3 (3) Provide assistance and aid to a public agency or other
4 person in developing and constructing new housing and
5 rehabilitating existing housing for elders of low- and
6 moderate-income, other persons of low- and moderate-
7 income, and persons displaced by any governmental
8 action, by making long-term mortgage or interim
9 construction loans available;
- 10 (4) Contract with any eligible bidders to provide for
11 construction of urgently needed housing for persons of
12 low- and moderate-income;
- 13 (5) Guarantee the top twenty-five per cent of the
14 principal balance of real property mortgage loans,
15 plus interest thereon, made to qualified borrowers by
16 qualified lenders;
- 17 (6) Enter into mortgage guarantee agreements with
18 appropriate officials of any agency or instrumentality
19 of the United States to induce those officials to
20 commit to insure or to insure mortgages under the
21 National Housing Act, as amended;



1 (7) Make a direct loan to any qualified buyer for the
2 downpayment required by a private lender to be made by
3 the borrower as a condition of obtaining a loan from
4 the private lender in the purchase of residential
5 property;

6 (8) Provide funds for a share, not to exceed fifty per
7 cent, of the principal amount of a loan made to a
8 qualified borrower by a private lender who is unable
9 otherwise to lend the borrower sufficient funds at
10 reasonable rates in the purchase of residential
11 property; and

12 (9) Sell or lease completed dwelling units.

13 For purposes of this section, a limitation is applicable to
14 the extent that it may reasonably be construed to apply to a
15 county.

16 (b) Each county shall issue affordable housing credits to
17 the department of Hawaiian home lands with respect to existing
18 and future Hawaiian home lands projects upon a request for such
19 credits by the department of Hawaiian home lands. The credits
20 shall be transferable and shall be issued on a one-unit for one-
21 unit basis. The credits may be applied county-wide within the
22 same county in which the credits were earned to satisfy



1 affordable housing obligations imposed by the county on market
2 priced residential and non-residential developments.

3 The director of taxation shall prepare any forms that may
4 be necessary to claim an affordable housing credit under this
5 section. The chairperson of the Hawaiian homes commission shall
6 require the taxpayer to furnish information to ascertain the
7 validity of a claim for the affordable housing credit made under
8 this subsection and may adopt rules necessary to effectuate the
9 purposes of this subsection pursuant to chapter 91.

10 Every qualified taxpayer, no later than March 31 of each
11 year in which qualified costs were expended in the previous
12 taxable year, shall submit a written, certified statement to the
13 chairperson of the Hawaiian homes commission, in the form
14 specified by the chairperson of the Hawaiian homes commission,
15 identifying:

- 16 (1) Qualified costs, if any, expended in the previous
17 taxable year;
- 18 (2) The amount of affordable housing credit claimed
19 pursuant to this subsection, if any, in the previous
20 taxable year; and
- 21 (3) The tax liability under this subsection and chapters
22 237, 237D, 238, 239, 241, and 431, if applicable,



1 against which the affordable housing credit is
2 claimed.

3 Notwithstanding any other law to the contrary, a qualified
4 taxpayer, by claiming the affordable housing credit under this
5 subsection, consents to the public disclosure of the information
6 described under paragraphs (1) to (3), which shall be available
7 for public inspection and dissemination under chapter 92F."

8 SECTION 4. Section 201H-36, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) All claims for exemption under this section shall be
11 filed with and certified by the corporation and forwarded to the
12 department of taxation. Any claim for exemption that is filed
13 and approved, shall not be considered a subsidy for the purpose
14 of this part.

15 The director of taxation shall prepare any forms that may
16 be necessary to claim an exemption under this section. The
17 director of taxation may also require the taxpayer to furnish
18 information to ascertain the validity of a claim for exemption
19 made under this section and may adopt rules necessary to
20 effectuate the purposes of this section pursuant to chapter 91.

21 Every qualified taxpayer, no later than March 31 of each
22 year in which qualified costs were expended in the previous



1 taxable year, shall submit a written, certified statement to the
2 Hawaii housing finance and development corporation, in the form
3 specified by the Hawaii housing finance and development
4 corporation, identifying:

- 5 (1) Qualified costs, if any, expended in the previous
6 taxable year;
7 (2) The amount of tax exemption claimed pursuant to this
8 section, if any, in the previous taxable year; and
9 (3) The tax liability under this chapter and chapters 237,
10 237D, 238, 239, 241, and 431, if applicable, against
11 which the tax exemption is claimed.

12 Notwithstanding any other law to the contrary, a qualified
13 taxpayer, by claiming the exemption under this subsection,
14 consents to the public disclosure of the information described
15 under paragraphs (1) to (3), which shall be available for public
16 inspection and dissemination under chapter 92F."

17 SECTION 5. Section 237-29, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§237-29 Exemptions for certified or approved housing**
20 **projects.** (a) All gross income received by any qualified
21 person or firm for the planning, design, financing,
22 construction, sale, or lease in the State of a housing project



1 that has been certified or approved under section 201H-36 or
2 section 46-15.1 shall be exempt from general excise taxes.

3 (b) All gross income received by a nonprofit or a limited
4 distribution mortgagor for a low- and moderate-income housing
5 project certified or approved under section 201H-36 or section
6 46-15.1 shall be exempt from general excise taxes.

7 (c) The director may conduct periodic reviews of all
8 housing projects for which a claimant has received a general
9 excise tax exemption. Each periodic review shall occur not less
10 than once every three years following the close of the taxable
11 year for which a claimant received a general excise tax
12 exemption. Each periodic review shall determine whether the
13 housing project has met eligibility criteria under section 201H-
14 36 or section 46-15.1 and other applicable laws and rules for
15 each taxable year for which a claimant received a general excise
16 tax exemption.

17 [~~e~~] (d) The director of taxation and the Hawaii housing
18 finance and development corporation shall adopt rules pursuant
19 to chapter 91 for the purpose of this section, including any
20 time limitation for the exemptions~~[-]~~ and penalties for
21 claimants who have received a general excise tax exemption
22 without meeting or continuing to meet the appropriate



1 eligibility criteria in every taxable year during which the
2 claimant has received a general excise tax exemption."

3 SECTION 6. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun, before its effective date.

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

8 SECTION 8. This Act shall take effect on September 14,
9 2047, and apply to gross income or gross proceeds received by
10 applicable taxpayers on or after its effective date; provided
11 that the amendments made to section 46-15.1, Hawaii Revised
12 Statutes, shall not be repealed when that section is reenacted
13 on June 30, 2015, pursuant to Act 141, Session Laws of Hawaii
14 2009.



Report Title:

General Excise Tax; Exemption Requirement; Trust Fund Liability

Description:

Precludes a taxpayer from using a general excise tax benefit, including exemptions, deductions, lower rates, or income splitting, unless the taxpayer follows all administrative requirements, subject to exemptions. Creates trust fund liability for revenues collected by a business as a tax recovery whether such amount is separately stated or not. Provides for public disclosure of certain information relating to claims for credits or exemptions. Authorizes the department of taxation to conduct periodic reviews of housing projects certified for a general excise tax exemption. Clarifies that county housing projects are also entitled to tax exemptions under sections 237-29 and 238-3(j), HRS. Takes effect September 14, 2047.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

