

TAX FACTS

From the
State of Hawaii, Department of Taxation

November, 1998

TAX ISSUES FOR HAWAII NONPROFIT ORGANIZATIONS

98-3

Due to the generous nature of the people of Hawaii, we have a multitude of groups that are organized as "not-for-profit" in nature. Tax Facts No. 95-1, "All About the Hawaii Use Tax" and Tax Facts No. 96-1, "General Excise vs. Sales Tax" also may be helpful when reading this issue of Tax Facts. The Department has also issued a Tax Advisory on the application of the general excise tax (GET) to tourist wedding activities of churches dated April 21, 1997, that contains specific information about the GET exemption for churches and, in particular, their tourist wedding activities. The following are some of the commonly asked questions regarding the taxation of tax-exempt organizations.

1. What is the difference between "nonprofit" and "tax-exempt" organizations?

For federal income tax purposes (federal Internal Revenue Code of 1986 — the "IRC"), tax-exempt status is accorded to certain kinds of organizations whether they be corporations, associations, trusts, or other entities. To achieve tax-exempt status, the organization must be organized and operated in a manner that conforms to the requirements set out in the IRC in addition to those prescribed under state law. Some organizations must also apply for determination of their exempt status with the Internal Revenue Service ("IRS"). The federal rules are complex and explained in IRS Publication 557, "Tax-Exempt Status for your Organization."

These "tax-exempt" organizations include those that are organized as not-for-profit, such as corporations organized under Hawaii nonprofit corporation laws. However, merely organizing as a nonprofit entity does not necessarily mean that the IRS will recognize it as tax-exempt. Again, the IRC imposes additional requirements to achieve tax-exempt status.

2. How do we qualify for tax-exempt treatment under Hawaii tax laws?

Hawaii imposes two taxes that are potentially applicable to organizations seeking tax-exempt status—the income tax and the GET.

The organization will be exempt from Hawaii *income* tax if the organization qualifies for exemption for federal income tax purposes under the IRC. If the organization is the type that must obtain a determination of exempt status from the IRS, then Hawaii will follow the determination of the IRS in this regard. No separate determination is required for Hawaii income tax purposes from the Hawaii Department of Taxation. Organizations organized and operated exclusively for religious, charitable, scientific, or educational purposes as described in IRC section 501(c)(3) are generally required to submit an application to the IRS to request recognition of exemption from federal income taxes. Certain organizations

are not required to obtain from the IRS a determination of their exempt status. These organizations are exempt from Hawaii income tax if they meet the requirements of the IRC section under which they claim to be exempt provided that Hawaii has adopted those IRC provisions. Hawaii has adopted the federal provisions of IRC section 501, except for IRC sections 501(c)(12), (15), and (16). IRC section 501(a) provides an exemption from federal income taxes to organizations described in IRC sections 501(c), 501(d), and 401(a). See IRS Publication 557 for procedures on how to apply for recognition of exempt status with the IRS.

3. We have been recognized as a tax-exempt organization by the IRS. When is our State income tax exemption effective?

The effective date for the exemption from Hawaii income taxes is the same as the effective date for federal purposes. You are not required to separately register or otherwise apply for recognition of exemption from the Hawaii Department of Taxation for *income* tax exemption purposes; however, as you will see in Question #6, you will need to do this for GET exemption purposes. As with the IRS, you must substantiate your organization's status as tax-exempt in the event that you are audited by the Hawaii Department of Taxation. If the organization is not required to file an application with the IRS, the effective date for Hawaii income tax will be the same date that the organization meets the requirements of the IRC section under which it is claiming to be exempt. In the event that the IRS revokes your exemption, Hawaii will treat the organization as taxable upon the effective date of that revocation.

4. We have been recognized as a tax-exempt organization by the IRS, what are my reporting requirements for Hawaii Income Tax purposes?

IRS publication 557 discusses the filing requirements and required disclosures of tax-exempt organizations for federal income tax purposes. If you are required to file Form 990-T with the IRS, you are required to file the corresponding Form

N-70NP and pay any tax due for Hawaii income tax purposes on this unrelated business income. Although you may be required to file a Form 990 or Form 990-EZ with the IRS, you are not required to file any corresponding information return for Hawaii income tax purposes. Private foundations, however, are required to file a copy of their federal filings with the Attorney General.

5. *The IRS has stated that we must file Form 990-T for "unrelated business income". What type of income is this and do we have to file a return with Hawaii?*

The IRS has issued guidelines regarding unrelated business income in IRS Publication 598, "Tax on Unrelated Business Income of Exempt Organizations". Hawaii follows the federal determination of unrelated business income for Hawaii *income* tax purposes. This refers to income from sales activity regularly carried on that is not in furtherance of an exempt purpose.

6. *If we are treated as tax-exempt for income tax purposes, does this mean we also are exempt from paying the GET?*

Not necessarily. The GET law provides that certain organizations created for purposes enumerated in sections 237-23(a)(3) through (6), of the Hawaii Revised Statutes (HRS), must apply for exemption from the payment of GET by filing Form G-6, Application for Exemption from the Payment of General Excise Taxes, with the Hawaii Department of Taxation. A one-time \$20 registration fee must be paid with Form G-6. If your organization already has paid the \$20 fee to obtain a general excise license number, you do not need to submit the \$20 registration fee — just fill in your GET license number on the Form G-6 in the box provided. See the Instructions for Form G-6 for a more detailed discussion of organizations which qualify to apply for a GET exemption.

7. *We filed Form G-6 and received a letter approving the GET exemption for our organization. If approved, when is the exemption effective?*

The law requires that the Form G-6 be filed within three (3) months of the commencement of business (with extensions of up to two (2) months for good cause). If the Form G-6 is filed within the required or extended period, the exemption shall apply to income earned from the date of commencement of business. If filed after this period, the exemption applies only to income received on or after the date the Form G-6 was filed. Once the exemption is allowed, no further application is necessary unless there is a material change in your objectives or operations.

8. *If granted the exemption, is all of the income we now receive exempt from the GET?*

It depends. Amounts received as dues, donations, or gifts are not included in gross income subject to the GET.

However, gross receipts derived from any activity the primary purpose of which is to produce income are subject to the GET even though used to fund the exempt purposes or activities of the organization. Consequently, gross income received from the conduct of any fundraising activity is subject to the GET. Other income may be exempt from the GET depending on the nature of the activity giving rise to the income in relation to the organization's stated exempt purpose (see Question #9).

9. *What types of activities are considered "fundraising activities"?*

In general, "fundraising activities" are activities conducted with the intention of generating income, and are outside of the organization's stated exempt purpose. The activity does not have to be profitable in order to be taxable, and can include gross receipts from a single event. (Do not confuse this with "unrelated business income" as defined for *income* tax purposes.)

Although casual sales are exempt from the GET, this exemption is not applicable to fundraisers. A fundraising activity would not be considered a "casual sale" since the activity is not a single occasional sale nor an incidental sale. It is an infrequent activity comprised of numerous sales or transactions, e.g., white elephant sales, fairs, bazaars, and the like. Furthermore, it does not matter that the items being sold were donated to the organization.

Example: An educational institution's stated purpose is "to educate students in an environment conducive to learning". The institution charges tuition to attend the institution and also sells learning materials. Occasionally, the institution has a fair or sells baked goods or other merchandise to raise funds for the institution to operate.

The gross income from the tuition and sale of learning materials is exempt from the GET since it is generated in the performance of the organization's stated exempt purpose. The gross income from the fair and other fundraising activities, although the income received from the activities is to be used in the fulfillment of the organization's stated purpose, is generated from activities outside the scope of the organization's stated purpose with the object of gain or economic benefit and is taxable for GET purposes.

10. *If we are registered with the State as tax-exempt under the GET law, does this mean we also are exempt from paying the GET visibly passed on by a vendor when we purchase items from the vendor?*

No. Because the GET is levied on the business receiving the income rather than on the customer, businesses still are subject to the GET on their sales to tax-exempt organizations. The business is not tax-exempt, even if the customer is. Therefore, tax-exempt organizations may have the GET visibly passed on to them when they buy goods and services. The

pass on of the GET is a matter of contract between the vendor and the tax-exempt customer.

11. Our organization rents out facilities it owns to other nonprofits, members, and the general public. Are these rents subject to the GET?

Yes. In general, when an organization leases or rents its facilities out to others, it is considered to be engaging in a business activity even if the rent may be just a cost recovery amount. Some organizations whose stated primary purpose is to provide facilities to the underprivileged or other exempt organizations may not be subject to the GET if they have been properly registered with the Department. See Question #6.

12. What type of income qualifies as donations and why aren't donations subject to the GET?

A donation is a gift which is voluntarily given without compensation or any expectation of return. Section 237-24(4), HRS, exempts "the value of all property of every kind and sort acquired by gift, bequest or devise". If a donor purchases a ticket for a dinner, concert, bowl of chili, or the like, the ticket sale is not a donation because something of value is being received for the donation. This remains true whether or not the donor has any intention of redeeming the ticket. Whether a receipt is a true donation depends on the circumstances of the activity involved, not on the name given to the transaction. For example, if an organization offers the use of its facilities in exchange for a "donation", the receipt will be treated as rental income subject to the GET.

13. We received payments for a benefit dinner. Why are we taxable on the gross amount and not just the amount designated as the cost of the dinner?

The rules for determining the amount of the contribution deductible for income tax purposes and the amount subject to the GET differ. For income tax purposes, federal rules permit under some circumstances the subtraction of the value of the goods or services provided by the charity from the total contribution to determine the deductible portion of the contribution. The GET, as a gross receipts tax, does not allow for such deductions to reduce the gross receipts subject to the GET even if a portion of the ticket price is considered a "donation".

14. We sell items and services which are donated to our organization. Are the amounts received from the sale of these donated items and services taxable for GET purposes?

Yes. The sale (including sales by auction) by a tax-exempt organization of donated items for fundraising purposes is an "activity the primary purpose of which is to produce income"; consequently, the gross proceeds derived from the activity is subject to the GET.

15. Does an activity have to be "profitable" in order for it to be subject to the GET?

No. See Questions #9 and #13.

16. We receive interest income from interest bearing checking and savings accounts. Are these amounts taxable for GET purposes?

The law provides that gross income subject to the GET includes, among other things, all receipts, actual or accrued by reason of the investment of the capital of the business engaged in, including interest. The contributions, donations, and dues received by the organization, as well as the income derived in conjunction with the organization's tax-exempt purpose and deposited in the bank, do not constitute "investment of the capital of a business in which engaged". A tax-exempt organization is not created for the purpose of making profits and, in theory, the interest received is deemed incidental to the primary purpose of depositing the monies in the bank for safekeeping, not for a business purpose, and consequently is not subject to the GET. However, interest earned from funds derived from an unrelated trade or business activity would be subject to the GET. See Question #5. (For a general discussion on the application of the GET to interest income, see Tax Information Release No. 42-74.)

17. If we are registered with the State as an exempt organization under the GET law, does this mean we also are exempt from paying the use tax?

No. Although section 237-23, HRS, exempts certain nonprofit organizations which have properly registered for exemption from the GET, the use tax law does not provide a corresponding exemption. The use tax levels the playing field for local merchants by requiring customers who acquire goods from out-of-state sellers to pay a tax on that purchase at the same rate that an in-state seller would have paid in GET if the sale had occurred in Hawaii. For more information on the use tax law, see Tax Facts No. 95-1, "All About the Hawaii Use Tax".

18. Where can we get additional information and assistance on how to start a nonprofit organization?

Act 120, Session Laws of Hawaii 1996, effective July 1, 1996, eliminated the requirement that charitable organizations register or file a statement of exemption with the Business Registration Division of the Department of Commerce and Consumer Affairs (DCCA) prior to soliciting funds in Hawaii. Act 120 did not eliminate the annual report requirements for foreign or domestic nonprofit corporations or any tax return filing requirements. For information on how to organize your nonprofit organization under Hawaii's Nonprofit Corporation Act (Chapter 415B, HRS), contact the Business Registration Division of the DCCA at (808)586-2727.

There also is a nonprofit organization which has an

assistance program to help individuals set up a nonprofit organization. Contact the Hawaii Community Services Council, Help for Nonprofits Program, 200 N. Vineyard

Boulevard, Suite 415, Honolulu, Hawaii 96817, or call them at (808) 521-3861.

STATE DISTRICT TAX OFFICE ADDRESSES & TELEPHONE NUMBERS

Website (Forms & Information)
<http://www.state.hi.us/tax/tax.html>

CD-ROM (Forms & Info)
Nominal Cost (Limited Supply)

Forms by Mail
808-587-7572
Toll-Free: 1-800-222-7572

Recorded Tax Updates
808-587-1234 and press 7700

Forms by FAX
Oahu 587-7572
Outside Oahu 808-678-9522 from
your fax machine

Telephone Devices for the Deaf (TDD)
Tax Service & Processing
808-587-1418
Toll-Free: 1-800-887-8974

Oahu District Tax Office
830 Punchbowl Street
P. O. Box 3559
Honolulu, HI 96811-3559

Maui District Tax Office
54 South High Street
P. O. Box 913
Wailuku, HI 96793-0913

Hawaii District Tax Office
75 Aupuni Street
P. O. Box 1377
Hilo, HI 96721-1377

Kauai District Tax Office
3060 Eiwa Street
P. O. Box 1688
Lihue, HI 96766-5688

Tax Information
Telephone No.: 808-587-4242
Jan.-April 20: 808-587-6515
Toll-Free: 1-800-222-3229
Fax No.: 808-587-1488

Telephone No.: 808-984-8500
Fax No.: 808-984-8522

Telephone No.: 808-974-6321
Fax No.: 808-974-6300

Telephone No.: 808-274-3456
Fax No.: 808-274-3461

The following publications are available from the Department of Taxation:

"An Introduction to the General Excise Tax"
"An Introduction to the Use Tax"
"An Introduction to the Tax Clearance Procedure"
Tax Facts 95-1: *"All About the Hawaii Use Tax"*
Tax Facts 96-1: *"General Excise vs. Sales Tax"*
Tax Facts 96-3: *"Tax Clearances Now Needed by Businesses Entering into State & County Contracts"*
Tax Facts 97-3: *"Starting a Business - Licenses and Taxes"*
Tax Information Release No. 21-69, *"General Excise Tax and Real Property Tax Exemptions as Applicable to Preschools or Day-Care Centers Operated by Churches"*
Tax Information Release No. 42-74, *"Application of the General*

Excise Tax to Interest Income"
Tax Information Release No. 89-6, *"General Excise Tax on the Fundraising Activities of Public School Sponsored Groups"*
Tax Information Release No. 89-13, *Application for Exemption from the General Excise Taxes for Nonprofit Organizations"*
Tax Information Release No. 91-2, *"Taxability of Gross Proceeds Received by a Nonprofit Organization From the Sale of Donated Services or Tangible Personal Property"*
Tax Information Release No. 91-4, *"Hawaii Tax Obligations of Nonprofit Organizations"*

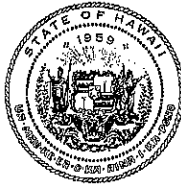
Some of the information contained in this Tax Facts was obtained from the Internal Revenue Service Publication 557, *"Tax Exempt Status for Your Organization"*

Tax Facts is a publication of the Department of Taxation on tax subjects of current interest and is not intended to be a complete statement of the law. Subsequent developments in the law (legislation, rules, cases, etc.) should be consulted.

FOR MORE INFORMATION CONTACT: TAXPAYER SERVICES (808) 587-4242

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STANLEY SHIRAKI
ACTING DIRECTOR OF TAXATION

RONALD B. RANDALL
ACTING DEPUTY DIRECTOR

July 29, 2010

TAX INFORMATION RELEASE NO. 2010-05

Re: Act 155, Session Laws of Hawaii 2010, Relating to General Excise Tax; The General Excise Tax Protection Act

On June 1, 2010, Governor Linda Lingle signed into law House Bill 2595 HD 1 SD 2 CD 1, which became law as Act 155, Session Laws of Hawaii 2010 (also referred to as the "GET Protection Act").

Act 155 amends Chapter 237, Hawaii Revised Statutes (HRS), by adding two new sections. The first new section statutorily denies certain general excise tax benefits to taxpayers that fail to comply with administrative procedures. The second new section creates trust fund liability, or personal liability, for certain amounts where a responsible person willfully fails to pay over those amounts to the government.

The purpose of this Tax Information Release is to provide guidance on the Department's interpretation of Act 155, in addition to providing examples and safe harbors for certain of its provisions.

DENIAL OF GENERAL EXCISE TAX BENEFITS

Section 2 of Act 155 creates a new obligation for all persons doing business in Hawaii with gross income or gross receipts as defined by HRS § 237-3, to comply with two administrative requirements. Failure to comply with the administrative requirements will result in the taxpayer's loss of any benefit available under the general excise tax law, including exemption from the law.

A. Administrative Requirements

In order to maintain entitlement to any general excise tax benefit, the person claiming the benefit must:

- 1) File for and obtain a general excise tax license, available on Form BB-1, *State of Hawaii Basic Business Application*; and
- 2) File an annual general excise tax reconciliation tax return on Form G-49, *Annual Return & Reconciliation of General Excise/Use Tax Return*, within 12 months from the due date for the return.

Taxpayers with gross income or gross receipts who are engaging in business within the meaning of Chapter 237, HRS, were always required to comply with both of these requirements. *See* HRS §§ 237-9, 237-33.

The GET Protection Act simply requires taxpayers to obtain a general excise tax license and file the annual reconciliation return. Failure to claim the general excise tax benefit on the annual return will not automatically preclude the taxpayer from claiming the general excise tax benefit on an amended return filed within the statute of limitations for assessment or refund, or from receiving the general excise tax benefit by adjustment upon audit.

B. General Excise Tax Benefits

A general excise tax benefit that could be jeopardized for failure to comply with the statutory administrative requirements of the GET Protection Act includes any of the following:

- 1) Exemption amount, including exemption from application of Chapter 237;
- 2) Exempt taxpayer or entity, including exemption from application of Chapter 237;
- 3) Any exclusion, including the exclusion for exporting tangible personal property, contracting, or services;
- 4) Reduction from the measure of general excise tax;
- 5) Deduction, including the subcontractor's deduction;
- 6) Tax credit, including an offsetting credit for taxes paid to another state;
- 7) Lower rate of tax, including the 0.15% rate for insurance producers or the 0.5% rate for certain manufacturing or wholesaling; or
- 8) Segregation or splitting of a gross income or gross receipts, including commission splitting or segregation involving agency relationships, reimbursements, or tourism activities.

Please note that the foregoing list is not exhaustive.

C. Reasonable Cause; Safe Harbor Protection

The GET Protection Act authorizes the Director of Taxation to waive the denial of general excise tax benefits in certain situations where the failure to obtain a general excise tax license or file an annual reconciliation return is due to reasonable cause and not willful neglect.

The following circumstances are deemed to have reasonable cause within the meaning of Act 155 and the Department will not utilize Act 155 to deny a general excise tax benefit in the following situations:

- 1) The provisions of the United States Constitution or laws of the United States prohibit the Department from imposing the tax;

- 2) The person is not “engaging” in “business” within the meaning of HRS § 237-2;
- 3) The amounts involved are not “gross income” or “gross proceeds of sale” as defined in HRS § 237-3(b);
- 4) The person is a Public Service Company and the gross income or gross proceeds are included in the measure of the tax imposed by Chapter 239, HRS;
- 5) Amounts received by persons exempt under HRS § 237-23(a)(3) through (6); provided that such person is exempt from filing federal Form 990, *Return of Organization Exempt from Income Tax*, or Form 990-EZ, *Short Form—Return of Organization Exempt from Income Tax*;
- 6) Amounts received that are exempt under HRS §§ 237-24(1) through (7) (with respect to certain insurance proceeds, gifts, bequests, compensatory tort damages, salaries or wages, and alimony);
- 7) Amounts received that are exempt under HRS § 237-24.8(a) (with respect to certain amounts not taxable for financial institutions);
- 8) Amounts received that are exempt under HRS § 237-29.7 (with respect to certain amounts not taxable for insurance companies);
- 9) Credit unions chartered under Chapter 412, HRS, and exempt from tax as provided in HRS § 412:10-122;
- 10) Any other amounts, persons, or transactions as determined by the Director to be made by subsequent Announcement or Tax Information Release.

The safe harbors set forth above are illustrated by the following examples:

EXAMPLE 1—ABC Corp. is headquartered and conducts primarily all of its business outside Hawaii. ABC Corp.’s business activity is the wholesaling of tangible personal property for resale at retail. ABC Corp. sells a small amount of tangible personal property in Hawaii and takes the position that it has no nexus with Hawaii. ABC Corp. therefore has not obtained a general excise tax license nor filed any general excise tax annual returns. The Department opens an audit of ABC Corp.’s nexus to determine whether ABC Corp. should have been filing Hawaii general excise tax returns. The Department determines that, because ABC Corp. was found to have a sales agent in Hawaii, ABC Corp. is responsible for the Hawaii general excise tax and should have obtained a general excise tax license and further should have filed general excise tax returns. ABC Corp. appeals the Department’s assessment, exhausting its appeals. Ultimately, it is determined that ABC Corp. has nexus with Hawaii for general excise tax purposes. Under Act 155, ABC Corp. will lose its general excise tax benefit of the lower 0.5% wholesale rate because it failed to obtain a general excise tax license and file a general excise tax annual return. ABC Corp. is not entitled to the safe harbor protection because Hawaii was not without the authority to assert the general excise tax against ABC Corp. based upon the United States Constitution’s Commerce Clause. *See Safe Harbor 1, above. [ABC Corp. would have maintained its general excise tax benefit (i.e., the lower 0.5% general excise tax rate for wholesaling, assuming ABC Corp. does in fact qualify for the lower 0.5% rate) if, prior to being audited, ABC Corp. would have obtained a general excise tax license and filed an annual general*

excise tax return claiming it had no nexus with Hawaii, even if the position was ultimately found to be in error.]

EXAMPLE 2—Assume the same facts as in Example 1, except that ABC Corp. is successful upon final appeal and is found not to have nexus with Hawaii and that Hawaii is without the power to tax ABC Corp. under the Commerce Clause. ABC Corp. falls within the safe harbor protection because Hawaii is without the power under the US Constitution to tax ABC Corp. *See Safe Harbor 1, above.*

EXAMPLE 3—Larry Landowner sold land that he owned in fee simple. Amounts received from the sale of land in fee simple are not considered “gross income” under the general excise tax. Larry Landowner will not lose his exemption from the sale of land in fee simple if he does not obtain a general excise tax license or file an annual general excise tax return because amounts received from the sale of land in fee simple is within the safe harbor protection for amounts not considered “gross income” under HRS § 237-3(b). *See Safe Harbor 3, above.*

EXAMPLE 4—John Doe is a salaried employee for Bonanza Corp. Salary and wages are exempt from general excise tax. John Doe will not lose his exemption for his salary if he does not obtain a general excise tax license or file an annual general excise tax return because employees who receive salary or wages are within the safe harbor protection for amounts received under HRS § 237-24(6). *See Safe Harbor 6, above.*

EXAMPLE 5—XYZ Organization, a nonprofit organization that provides social services to the low-income, holds a general excise tax exemption certificate from the Department. XYZ Organization’s gross receipts are less than \$15,000 per year, which are comprised of both donations and small fees charged for services that would be exempt under HRS § 237-23(a)(4). XYZ Organization is exempt from filing federal Forms 990 and 990-EZ because its gross receipts are less than the federal threshold amount (*i.e.*, normally \$25,000 or less in gross receipts per year). The Department will not utilize Act 155 to deny XYZ Organization its general excise tax exemption because XYZ Organization is within the safe harbor protection for certain organizations exempt from filing federal Forms 990 and 990-EZ. *See Safe Harbor 5, above.*

EXAMPLE 6—Assume the same facts as in Example 5, except that XYZ Organization’s \$15,000 in gross receipts per year is comprised of fees charged in furtherance of its exempt purpose that are exempt from general excise tax under HRS § 237-23(a)(4) and fundraising activities taxable under the general excise tax. Under this scenario, the Department will not utilize Act 155 to deny XYZ Organization its general excise tax exemption because XYZ Organization falls within the safe harbor protection for certain organizations exempt from filing federal Forms 990 and 990-EZ; however, upon audit, XYZ Organization will be required to obtain a general excise tax license and file general excise tax returns for the taxable receipts from fundraising activity. XYZ Organization’s tax exemption for the fees under HRS § 237-23(a)(4) will be preserved under the safe harbor protection. *See Safe Harbor 5, above. The safe harbor protection from Act 155 in this TIR does not relieve a taxpayer from general excise tax responsibility for taxable activities.*

EXAMPLE 7—Assume the same facts as in Example 5, except that XYZ Organization has gross receipts of \$100,000 per year and is required by federal law to file a federal 990 series form. Assume further that \$50,000 of XYZ Organization’s receipts constitute gifts and donations, \$30,000 of the receipts constitute fees charged in furtherance of its exempt purpose that are exempt from general excise tax under HRS § 237-23(a)(4), and \$20,000 is from taxable fundraising. Assume further that XYZ Organization has obtained a general excise tax license; however has failed to file an annual general excise tax return within the time required by Act 155. When audited, XYZ Organization will have the following adjustments due to the application of Act 155: (1) All of the \$50,000 constituting gifts or donations will continue to be exempt from general excise tax and will not have Act 155 utilized to deny the exemption for these amounts because gifts and donations are protected under a separate safe harbor. *See Safe Harbor 6 for amounts received as gifts.* (2) XYZ Organization is not entitled to the safe harbor protection for certain tax-exempt organizations under HRS § 237-23(a)(4) because its gross receipts require filing a federal 990 series form. XYZ Organization will lose the general excise tax exemption for the fees charged in furtherance of its tax exempt purpose that were otherwise tax exempt under HRS § 237-23(a)(4) by operation of Act 155. (3) XYZ Organization will owe any unpaid general excise tax for the fundraising because there is no general excise tax benefit for this amount. The conclusions in this example assume that XYZ Organization had no reasonable cause outside the safe harbors in this TIR.

EXAMPLE 8—Assume the same facts as in Example 7; however XYZ Organization demonstrated to the Director of Taxation that it had reasonable cause for failing to file its annual general excise tax return. Under these facts, XYZ Organization will be entitled to maintain the exempt character of its fees charged in furtherance of its tax exempt purpose that are exempt under HRS § 237-23(a)(4). The gifts always remained protected. XYZ Organization will owe any unpaid general excise tax for the fundraising.

TRUST FUND LIABILITY

Section 2 of Act 155 also creates liability for certain key individuals involved in the financial management of taxpayers.

A. Amounts Held in Trust

Under the new amendment, certain key individuals will be personally liable for unpaid general excise tax involving the following amounts:

- 1) Any amount separately stated as a tax. This amount includes any separately stated amount on a receipt, invoice, contract or other evidence of the business activity where the amount is designated as a tax; or
- 2) An imputed tax liability equal to the general excise tax owed on a transaction where the amount of tax is not separately stated. The imputed liability amount is the gross income multiplied by the proper tax rate. For example, assume ABC Corp. sold an automobile for \$20,000 cash with no tax separately stated. Under Act 155, the

amount of imputed tax subject to trust fund liability is \$800 of the \$20,000 received (*i.e.*, \$20,000 x 4% GET (assuming no county surcharge)).

The foregoing amounts are statutorily held in trust for the benefit of the State and for payment to the State as general excise tax liability. A key individual will be held personally liable for these amounts. Liability under Act 155 remains notwithstanding dissolution of the taxpayer's business.

B. Key Individuals

Persons subject to personal liability under Act 155 are the following persons typically involved in the financial management of taxpayers: any officer, member, manager, or other person having control or supervision over amounts of gross proceeds or gross income to be held in trust; as well as any person who is charged with the responsibility of filing or paying general excise taxes.

The liability of these key individuals is limited to the extent the person was in control or in a capacity of supervision, responsibility, or duty to act for the taxpayer.

C. Willful Failure

A person is personally liable under the GET Protection Act only where the Department proves that the person acted willfully. To prove that a person acted willfully, the Department must show that the person voluntarily and intentionally violated a known legal duty.

Act 155 authorizes the interpretation of trust fund liability to be construed in accordance with case law and regulations interpreting similar provisions of the Internal Revenue Code. The Department will utilize case law and regulations interpreting Sections 6672 and 7202 of the Internal Revenue Code (with respect to civil and criminal penalties for willful failure to pay over taxes held in trust) in construing the willful standard contained in Act 155.

D. Good Cause

The Director is authorized to relieve key individuals from liability for good cause. The burden of proof and persuasion to demonstrate good cause is upon the person seeking relief from liability.

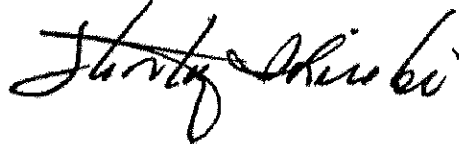
E. Personal Liability is Prospective Only

Act 155 is effective on July 1, 2010. Personal liability under Act 155 for certain key individuals only applies to gross income or gross proceeds received by a taxpayer on or after that date. Personal liability is prospective only and does not extend to gross income or gross proceeds received prior to July 1, 2010.

EFFECTIVE DATE

Act 155 is effective on July 1, 2010, and applies to gross income or gross proceeds received on or after its effective date.

For more information, contact the Technical Section at 587-1577.

A handwritten signature in black ink, appearing to read "Stanley Shiraki". The signature is fluid and cursive, with the first name "Stanley" written in a larger, more prominent script than the last name "Shiraki".

STANLEY SHIRAKI
Acting Director of Taxation

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



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September 26, 2011

TAX INFORMATION RELEASE NO. 2011-04

RE: General Excise Tax Reporting Requirements for Nonprofit Organizations

The purpose of this Tax Information Release (TIR) is to announce that most nonprofit organizations are not required to file Schedule GE-1¹, "Survey of General Excise/Use Tax Exemptions and Deductions" and to clarify the general excise tax licensing and reporting requirements for nonprofit organizations generally and for purposes of Hawaii Revised Statutes ("HRS") section 237-9.3.

I. Information Reporting Required by Act 105 on Schedule GE-1

This TIR serves as the official pronouncement that Schedule GE-1 will not be required for most nonprofit organizations who have filed a Form G-6, "Application for Exemption from the General Excise Tax," or Form G-6S, "Application for Exemption from the General Excise Tax (Short Form)," and have been granted an exemption from the general excise tax from the Department of Taxation (the "Department").¹

Section 2 of Act 105, Session Laws of Hawaii ("SLH") 2011, ("Act 105") directed the Department of Taxation to

require information reporting on all exclusions or exemptions of all amounts, persons, or transactions from this chapter, except for the following:

- (1) Amounts received that are exempt under section 237-24(1) through (7); and
- (2) Any other amounts, persons, or transactions as determined by the director to be in the best interest of tax administration and made by official pronouncement.

¹ A small group of nonprofit organizations with unrelated trade or business income who have claimed general excise tax exemptions or deductions will be required to file the Schedule GE-1.

See Department of Taxation Announcement 2011-26 for a discussion of these information reporting requirements.

A. Nonprofit Organizations Not Required to file Schedule GE-1

The director has determined that, in the best interest of tax administration, nonprofit organizations, who have filed a Form G-6 or Form G-6S and received a letter from the Department that the nonprofit organization qualifies for exemption from general excise tax, will not be required to provide Act 105 information reporting on general excise and use tax exemptions and deductions actually claimed, unless the nonprofit organization has unrelated trade or business income and claimed general excise tax exemptions or deductions. Therefore, most nonprofit organizations, who have been granted an exemption from general excise taxation from the Department after filing Form G-6 or Form G-6S, will not be required to file the Schedule GE-1.

B. Nonprofit Organizations Required to File Schedule GE-1

Nonprofit organizations will be required to file the Schedule GE-1, if the nonprofit organization has unrelated trade or business income and claims general excise tax exemptions or deductions with respect to that income.

II. Denial of General Excise Tax Benefits

Under section 237-9.3, HRS, any nonprofit organization who is required to obtain a general excise tax license and fails to do so or who has a license and fails to file Form G-49 within 12 months of the prescribed due date may be denied general excise tax benefits, such as exemptions, deductions, or lower rates, unless the organization qualifies for the safe harbor protection provided in TIR No. 2010-05, as discussed below.² Section 237-9.3, HRS, applies to gross income or gross proceeds received on or after July 1, 2010.

III. Who Must Obtain a General Excise Tax License

Any nonprofit organization, who has income that is subject to the general excise tax, including fundraising income, must obtain a general excise tax license. A general excise tax license is obtained by filing a Form BB-1, "State of Hawaii Basic Business Application." If a nonprofit organization filed a Form G-6 or Form G-6S and was assigned a Hawaii tax identification number, the nonprofit organization still needs to file a Form BB-1 to obtain a general excise tax license if the organization has income that is subject to the general excise tax, including fundraising income.

Nonprofit organizations that file federal Form 990-N and whose only source of income is donations (see part IV(A) below) and/or exempt function or exempt purpose income (see part IV(C)(1) below), are not required to obtain a general excise tax license.

² In addition, the director may waive the denial of the general excise tax benefit, if the failure to comply is due to reasonable cause and not the willful neglect of the taxpayer. HRS Section 237-9.3(c).

Nonprofit organizations that file federal Form 990 or Form 990-EZ are required to obtain a general excise tax license. Any nonprofit organization that is required to obtain a general excise tax license and fails to do so may be penalized under section 237-9.3, HRS, unless the organization qualifies for safe harbor protection provided in Tax TIR 2010-05, as discussed below.²

IV. Form G-45 and G-49 Reporting and Filing for Nonprofit Organizations

Nonprofit organizations have many different types of income. How to report these different types of income and associated exemptions on the Form G-45, "Periodic General Excise/Use Tax Return," and Form G-49, "Annual Return and Reconciliation of General Excise/Use Tax Return," may not be clear to many nonprofit organizations. In addition, any nonprofit organization that fails to file Form G-49 within 12 months of the prescribed due date may be penalized under section 237-9.3, HRS, unless the organization qualifies for safe harbor protection provided in TIR 2010-05, as discussed below. Therefore, nonprofit organizations must carefully consider their reporting requirements.

In general, the main types of income received by a nonprofit organization are (1) contributions, donations, gifts, and bequests; (2) dues; (3) income resulting from the nonprofit organization's exempt function or purpose; and (4) fundraising income. The following discusses how each of these types of income are to be reported on Form G-45 and Form G-49.

A. Contributions, Donations, Gifts and Bequests

Section 237-24(4), HRS exempts from the general excise tax amounts received as gifts or bequests. Contributions and donations to a nonprofit organization would generally fall into this category. Please see Tax Facts 99-4, "Parent-Teacher Organizations and Other School-Related Organizations," and Tax Facts 98-3, "Tax Issues for Nonprofit Organizations," for a discussion of what constitutes a donation that is not subject to general excise tax.

The general excise tax exemption for contributions, donations, gifts, and bequests under section 237-24(4) will not be denied under HRS section 237-9.3 (see safe harbor #6 in TIR 2010-05). Do not report contributions, donations, gifts, or bequests on Form G-45 or Form G-49. See "General Instructions for Filing the General/Excise/Use Tax Returns" page 20.

B. Dues

In general, membership dues are not subject to general excise tax and will be treated like contributions, donations, gifts, and bequests. See Tax Facts 99-4, Q&A 35. Therefore, do not report membership dues on Form G-45 or Form G-49.

C. Exempt Function or Exempt Purpose Income

Section 237-23(a)(3) through (6) of the HRS, exempts from general excise tax certain nonprofit organizations provided that (1) the organization has filed Form G-6 or Form G-6S with

the Department and been granted an exemption from general excise tax; (2) no private inurement to any private stockholder or individual exists; and (3) the exemption only applies to income from the exempt activities of the organization and "not to any activity the primary purpose of which is to produce income even though the income is to be used for or in furtherance of the exempt activities of ..." the organization. HRS Section 237-23(b).

1. Nonprofits Who Are Exempt From Filing Federal Form 990 & 990-EZ

For purposes of HRS section 237-9.3, only certain nonprofit organizations will be in jeopardy of losing the tax exemption provided in HRS section 237-23(a)(3) through (6), if the nonprofit organization fails to obtain a general excise tax license or fails to file Form G-49 within 12 months of the prescribed due date. Pursuant to TIR 2010-05, a nonprofit organization that is exempt from filing federal Form 990, "Return of Organization Exempt from Income Tax," or Form 990-EZ, "Short Form – Return of Organization Exempt from Income Tax," will not be subject to HRS section 237-9.3. Therefore, nonprofit organizations that are only required to file the Form 990-N, "Electronic Notice (*e*-Postcard) for Tax-Exempt Organizations not Required to File Form 990 or 990-EZ," are not subject to section 237-9.3.³ Accordingly, a nonprofit organization that does not file a Form 990 or Form 990-EZ, is an organization described under HRS section 237-23(a)(3) through (5), and only has income that meets the requirements under HRS section 237-23(b)(1) through (3) for exemption ("exempt function income"), or donations exempt under section 237-24(4), or a combination of exempt function income and donations, does not have to obtain a general excise tax license or file a Form G-45 or Form G-49.⁴ Any nonprofit organization that does not have to file Form 990 or Form 990-EZ but has income that is subject to general excise tax, in addition to income that is exempt under section 237-23(b), is required to obtain a general excise tax license and must file a Form G-45 and Form G-49.

2. Nonprofits Who Are Required to File Federal Form 990 or 990-EZ

However, a nonprofit organization that must file a Form 990 or Form 990-EZ and qualifies for the exemption under HRS section 237-23(a)(3) through (5) must obtain a general excise tax license and file Form G-45 and Form G-49. Gross receipts that qualify for the exemption provided in section 237-23(a)(3) through (5) and 237-23(b)(1) through (3) are reported as gross income in column (a) of Form G-45 and Form G-49 and the exemption is claimed in column (b) of Form G-45 and Form G-49. In addition, Schedule GE must be completed.

³ For the 2010 tax year, nonprofit organizations with gross receipts of \$200,000 or more or total assets of \$500,000 or more must file Form 990. Nonprofit organizations with gross receipts of less than \$200,000 and total assets of less than \$500,000 are required to file Form 990 or Form 990-EZ. Nonprofit organizations with gross receipts normally less than \$50,000 are required to file Form 990-N. In addition, certain types of organizations are not required to file Form 990 or Form 990-EZ, such as churches and section 501(c)(1) organizations. Please see the instructions to Form 990 and Form 990-EZ for a more detailed explanation of who must file Form 990 and Form 990-EZ.

⁴ However, if no Form G-49 is filed for the taxable year, then the statute of limitations prohibiting the Department from assessing tax on unreported or underreported income does not commence. See HRS section 237-40.

D. Fundraising Income

All nonprofit organizations that receive fundraising income are subject to general excise tax on that income and are required to obtain a general excise tax license and must file a Form G-45 and Form G-49 to report that income. See Tax Facts 99-4 and 98-3 for a discussion of what constitutes taxable fundraising income. For example, a little league baseball team with annual gross receipts of \$5,000 and no assets submitted a Form G-6 and received a letter from the Department approving the team's exemption under section 237-23(a)(4). The team holds a car wash to raise funds for a trip to attend a baseball tournament in California. The car wash generates \$750.00 in gross receipts. The team must obtain a general excise tax license and file a Form G-45 and Form G-49 and pay general excise tax on the \$750.00 of gross receipts from the car wash.

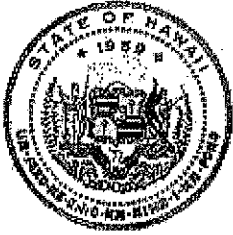
V. Conclusion

In general, nonprofit organizations, who have filed Form G-6 or Form G-6S and received a letter from the Department that the nonprofit organization qualifies for exemption from general excise tax, are excluded from the Act 105 information reporting requirements and are not required to file Schedule GE-1. However, any nonprofit organization with unrelated trade or business income who has claimed general excise tax exemptions or deductions will be required to file the Schedule GE-1. Nonprofit organizations must analyze the types of income received to determine their general excise tax reporting requirements for Forms G-45 and Form G-49.

The chart below summarizes the conclusions set forth in this tax information release.

Federal Form Filed	Type of income	Can GET exemption be denied under HRS §237-9.3?	GET li-cense re-quired?	Reportable for GET purposes?	Sch GE-1 Survey re-quired?
990-N	Donations only	No (SH 5, 6)*	No	No	No
	Exempt function income	No (SH 5)*	No	No	No
	Fundraising	Taxable activity	Yes	Yes	No
	Unrelated trade or business income	Taxable activity with exemption under another HRS section	Yes	Yes	Yes
990 or 990-EZ	Donations only	No (SH 6)*	Yes	No	No
	Exempt function income	Yes	Yes	Yes	No ¹
	Fundraising	Taxable activity	Yes	Yes	No ¹
	Unrelated trade or business income	Taxable activity with exemption under another HRS section	Yes	Yes	Yes

* See safe harbor protection in section C of Tax Information Release No. 2010-05.



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DISABILITY COMPENSATION DIVISION

Princess Keelikolani Building, 830 Punchbowl Street, Room 209, Honolulu, Hawaii 96813

FORM HC-5 EMPLOYEE NOTIFICATION TO EMPLOYER
FOR CALENDAR YEAR 2014

Instructions to employee: Keep a copy of your completed, signed form for yourself.

Use this form if any of these apply to you:

- You work for 2 or more employers**
- You are claiming an exemption or waiver from health care coverage
- You are terminating your exemption
- You are changing your principal and/or secondary employer designation**

Do **not** use this form if either:

- You work for only 1 employer and that employer provides your health care coverage
- You work less than 20 hours per week for your employer

**The principal employer is the employer who pays you the most wages. Or if you work for 1 of your employers at least 35 hours a week but that employer does not pay you the most wages, you choose which employer is the principal employer.

Employer name	DOL account number
Address	Telephone No. ()

In accordance with the provisions of the Hawaii Prepaid Health Care Act (Chapter 393, Hawaii Revised Statutes), this is to notify my employer that: (Check appropriate box.)

<input type="checkbox"/> 1. Of the two or more concurrent employers that the undersigned works for (at least 20 hours a week), you have been selected as the principal employer and are therefore required to provide health care coverage for the undersigned (Section 393-6).
<input type="checkbox"/> 2. Of the two or more concurrent employers that the undersigned works for (at least 20 hours a week), you have been selected as the secondary employer and are therefore relieved of the responsibility to provide health care coverage for the undersigned until you are otherwise notified (Section 393-16).
<input type="checkbox"/> 3. I am exempt from health care coverage because I am: (Check appropriate box.) (Sections 393-17 and 393-22) <ul style="list-style-type: none"> <input type="checkbox"/> a. covered by a Federally established health insurance or prepaid health care plan, such as Medicare, Medicaid or medical care benefits provided for military dependents and military retirees and their dependents. <input type="checkbox"/> b. covered as a dependent under a qualified health care plan. <input type="checkbox"/> c. a recipient of public assistance or covered by a State-legislated health care plan governing medical assistance. <input type="checkbox"/> d. a follower of a religious group who depends upon prayer or other spiritual means for healing.
<input type="checkbox"/> 4. I waive coverage from my employer's health care plan; in lieu I have obtained a _____ (name of plan) plan from _____ (name of health care plan contractor) which satisfies the Prepaid Health Care Act (Section 393-21).
<input type="checkbox"/> 5. The coverage exemption/waiver previously indicated in items 2, 3 or 4 is no longer applicable; you are therefore required to provide health care coverage for the undersigned (Section 393-18). Requested effective date of coverage: _____.

Print employee name	Employee signature	
Address	Phone number ()	Date

Call (808) 586-9188 with any questions about this form.

Instructions to employer: Provide coverage as required by 1 and 5 above. Keep the completed, signed form and give a copy to the employee. You must keep this form for 2 years. **UPON REQUEST ONLY**, submit a copy of this form to the State Department of Labor & Industrial Relations. (Form must be renewed every December 31.)

Auxiliary aids and services are available upon request. Please call: (808) 586-9188; TTY (808) 586-8847; and for neighbor islands, TTY 1-888-569-6859. A request for reasonable accommodation(s) should be made no later than ten working days prior to the needed accommodation(s).

It is the policy of the Department of Labor and Industrial Relations that no person shall, on the basis of race, color, sex, marital status, religion, creed, ethnic origin, national origin, age, disability, ancestry, arrest/court record, sexual orientation, and National Guard participation, be subjected to discrimination, excluded from participation in, or denied the benefits of the Department's services, programs, activities, or employment.