
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that Act 353, Session
2 Laws of Hawaii 1997, attempted to reduce the pyramiding effect
3 of the general excise tax in property lease situations. Before
4 its enactment, the general excise tax of four per cent was
5 assessed on a lease and subsequent subleases of the same
6 property, resulting in the pyramiding of these taxes.

7 Act 353, however, added a great deal of complexity to the
8 law by requiring the determination of the fair rental value for
9 the different areas or spaces within the subject property and
10 the subleasing of one hundred per cent of the spaces in order to
11 receive the full deduction allowed under Act 353. These
12 requirements have added to the cost of businesses for lessors,
13 lessees, and property owners related to:

- 14 (1) Hiring appraisers to calculate the sublease deduction;
15 (2) Hiring accountants for time-consuming and costly
16 calculations and manipulations;
17 (3) Incurring costly tax appeal procedures and expensive
18 litigation costs; and



1 (4) Incurring continuing bookkeeping costs.

2 In order to remedy this problem, the legislature further
3 finds that Act 353 should have simply limited the deduction to
4 the lessee by the lower of the amount of either the rental
5 income paid to the lessor on the same property or the rental
6 income collected from the sublessee, whether the lessee improved
7 the property or not and no matter what percentage was subleased.

8 The allocated market values for each area and the fact that
9 the area is not one hundred per cent leased have no relevance to
10 the pyramiding costs that are passed down to each level of
11 leases and subleases. It is imperative that Act 353 be changed
12 in accordance with recommendations of the Tax Committee of the
13 Hawaii Society of Certified Public Accountants.

14 The purpose of this Act is to eliminate the costs related
15 to reducing the pyramiding effects of the general excise tax on
16 rent received by lessees on the same property, to ultimately
17 reduce the cost of doing business in Hawaii.

18 SECTION 2. Section 237-16.5, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§237-16.5 Tax on written real property leases; deduction**
21 **allowed.** (a) This section relates to the leasing of real
22 property by a lessor to a lessee. There is hereby levied, and



1 shall be assessed and collected annually, a privilege tax
2 against persons engaging or continuing within the State in the
3 business of leasing real property to another, equal to four per
4 cent of the gross proceeds or gross income received or derived
5 from the leasing; provided that where real property is subleased
6 by a lessee to a sublessee, the lessee, as provided in this
7 section, shall be allowed a deduction from the amount of gross
8 proceeds or gross income received from its sublease of the real
9 property. The deduction shall be [~~in the amount allowed under~~
10 ~~this section.~~] limited to the lower of:

11 (1) The amount of monetary gross proceeds or gross income
12 paid by the lessee to the lessor for the real property
13 or space; or

14 (2) The amount of monetary gross proceeds received from
15 the sublessee on the same real property or space.

16 All deductions under this section and the name and general
17 excise tax number of the lessee's lessor shall be reported on
18 the general excise tax return. Any deduction allowed under this
19 section shall only be allowed with respect to leases and
20 subleases in writing and relating to the same real property.

21 (b) The lessee shall obtain from its lessor a certificate,
22 in the form as the department shall prescribe, certifying that



1 the lessor is subject to tax under this chapter on the gross
2 proceeds or gross income received from the lessee. The absence
3 of the certificate in itself shall give rise to the presumption
4 that the lessee is not allowed the deduction under this section.

5 ~~[(c) If various real property or space leased to the~~
6 ~~lessee have different rental values, then the total monetary~~
7 ~~gross proceeds or gross income paid to a lessor for all real~~
8 ~~property or space shall first be allocated to the fair rental~~
9 ~~value for each real property or space. If the lessee leases~~
10 ~~less than one hundred per cent of real property or space that~~
11 ~~was leased from the lessor to a sublessee, then the total~~
12 ~~monetary gross proceeds or gross income paid by the lessee for~~
13 ~~that real property or space to its lessor shall be allocated.~~
14 ~~The percentage of real property or space subleased shall be~~
15 ~~multiplied by the monetary gross proceeds or gross income paid~~
16 ~~for the real property or space by the lessee to its lessor. The~~
17 ~~product of the preceding multiplication shall be deducted from~~
18 ~~the monetary gross proceeds or gross income received for real~~
19 ~~property or space by the lessee.~~

20 ~~Once the allocations are made, the appropriate deduction~~
21 ~~under subsection (g) shall be made.~~



1 ~~(d) The lessor shall make allocations under this section~~
2 ~~at the time the sublease is entered into and the allocations~~
3 ~~shall not be changed during the term of the sublease. There~~
4 ~~shall be a reasonable basis for the allocations, taking into~~
5 ~~consideration the size, quality, and location of the real~~
6 ~~property or space subleased. In no event shall the total amount~~
7 ~~allocated to all subleases exceed the total monetary gross~~
8 ~~proceeds paid by the lessee to its lessor. The director may~~
9 ~~redetermine the amount of the deduction under this section if~~
10 ~~the director finds that the basis for allocation is not~~
11 ~~reasonable or that redetermination is necessary to prevent the~~
12 ~~avoidance of taxes.~~

13 ~~(e)]~~ (c) As used in this section:

14 "Lease" means the rental of real property under an
15 instrument in writing by which one conveys real property for a
16 specified term and for a specified consideration, and includes
17 the written extension or renegotiation of a lease, and any
18 holdover tenancy.

19 "Lessee" means one who holds real property under lease, and
20 includes a sublessee.

21 "Lessor" means one who conveys real property by lease, and
22 includes a sublessor.



1 "Real property or space" means the area actually rented and
2 used by the lessee, and includes common elements as defined in
3 section 514B-3.

4 "Sublease" includes the rental of real property which is
5 held under a lease and is made in a written document by which
6 one conveys real property for a specified term and for a
7 specified consideration. Sublease includes the written
8 extension or renegotiation of a sublease and any holdover
9 tenancy under the written sublease.

10 "Sublessee" means one who holds real property under a
11 sublease.

12 "Sublessor" means one who conveys real property by
13 sublease.

14 [~~f~~] (d) This section shall not cause the tax upon a
15 lessor, with respect to any item of the lessor's gross proceeds
16 or gross income, to exceed four per cent.

17 [~~g~~] ~~After allocation under subsection (c), if necessary,~~
18 ~~the deduction under this section shall be allowed from the gross~~
19 ~~proceeds or gross income of the lessee received from its~~
20 ~~sublease in an amount calculated by multiplying the gross~~
21 ~~proceeds or gross income paid by the lessee to its lessor for~~
22 ~~the lease of the real property by the following amount:~~



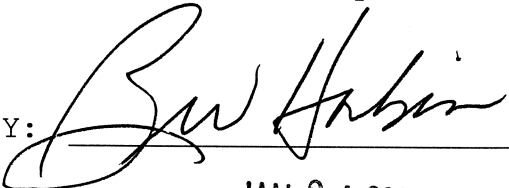
- 1 ~~(1) In calendar year 1998, .125;~~
- 2 ~~(2) In calendar year 1999, .25;~~
- 3 ~~(3) In calendar year 2000, .375;~~
- 4 ~~(4) In calendar year 2001, .50;~~
- 5 ~~(5) In calendar year 2002, .625;~~
- 6 ~~(6) In calendar year 2003, .75; and~~
- 7 ~~(7) In calendar year 2004, and thereafter, .875.~~

8 ~~The amount calculated under paragraphs (1) to (7) shall be~~
9 ~~deducted by the lessee from the lessee's total reported gross~~
10 ~~proceeds or gross income. The deduction allowed by this~~
11 ~~subsection may be taken by the fiscal and calendar year~~
12 ~~lessees.]"~~

13 SECTION 3. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect on July 1, 2006.

16

INTRODUCED BY: 
JAN 24 2006

HB 2586

Report Title:

General Excise Tax; Pyramiding; Leases

Description:

Eliminates the costs related to reducing the pyramiding effect of the general excise tax on a lease and subsequent subleases on the same property.

