
A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1 SECTION 1. The legislature finds that section 237-29.7,
2 Hawaii Revised Statutes, exempts "insurance companies" from
3 paying general excise tax on gross premiums. However, the term
4 "insurance companies" is not defined in this section or in
5 chapter 431, Hawaii Revised Statutes, which governs the
6 regulation of insurance. Instead, chapter 431 applies to
7 "insurers" and provides that "insurer" means "every person
8 engaged in the business of making contracts of insurance and
9 includes reciprocal or interinsurance exchanges."

10 Reciprocal insurers, unlike stock or mutual insurers which
11 are incorporated entities, are unincorporated associations of
12 individuals, partnerships, or corporations which are called
13 "subscribers." These subscribers act and exchange insurance
14 contracts through an attorney-in-fact common to all such
15 subscribers.

16 Section 431:3-108, Hawaii Revised Statutes, defines a
17 reciprocal insurer as "an unincorporated aggregation of
18 subscribers operating individually and collectively through an



1 attorney-in-fact common to all such persons to provide
2 reciprocal insurance among themselves." As a result, a
3 reciprocal insurer cannot conduct the business of insurance in
4 Hawaii without its attorney-in-fact.

5 However, the general excise tax law has been interpreted to
6 apply the tax to the gross income or gross proceeds earned by a
7 reciprocal insurer's attorney-in-fact for services rendered on
8 behalf of a reciprocal insurer. The basis for this
9 interpretation is that section 237-29.7, Hawaii Revised
10 Statutes, does not expressly define the reciprocal insurer's
11 attorney-in-fact as being part of a reciprocal insurer.

12 This interpretation has resulted in the unfair treatment of
13 reciprocal insurers and their attorneys-in-fact, who unlike
14 their incorporated stock or mutual insurer counterparts, are not
15 exempt from the general excise tax. This ultimately affects the
16 premium rates paid by subscribers who are insureds of the
17 reciprocal insurer.

18 The purpose of this Act is to recognize a reciprocal
19 insurer and its attorney-in-fact as a single entity that
20 qualifies for the general excise tax exemption under section
21 237-29.7, Hawaii Revised Statutes. Specifically, this Act:



1 (1) Ensures that when a reciprocal insurer is conducting
2 the business of insurance in Hawaii through its
3 attorney-in-fact, the reciprocal insurer and its
4 attorney-in-fact shall be considered a single entity
5 that qualifies for the general excise tax exemption
6 under section 237-29.7; and

7 (2) Clarifies that the general excise tax exemption
8 applies not to "insurance companies," but to
9 "insurers" authorized to do business under chapter
10 431, Hawaii Revised Statutes.

11 SECTION 2. Section 237-29.7, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+]§237-29.7[+] **Exemption of [~~insurance companies~~]**
14 **insurers**. This chapter shall not apply to the gross income or
15 gross proceeds of [~~insurance companies~~] insurers authorized to
16 do business under chapter 431; except this exemption shall not
17 apply to any gross income or gross proceeds received after
18 December 31, 1991, as rents from investments in real property in
19 this [~~State;~~] state; provided that gross income or gross
20 proceeds from investments in real property received by
21 [~~insurance companies~~] insurers after December 31, 1991, under
22 written contracts entered into before January 1, 1992, that do



1 not provide for the passing on of taxes or tax increases shall
2 not be taxed until the contracts are renegotiated, renewed, or
3 extended."

4 SECTION 3. Section 431:1-202, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§431:1-202 Insurer defined.** Insurer means every person
7 engaged in the business of making contracts of insurance and
8 includes reciprocal insurers or interinsurance exchanges."

9 SECTION 4. Section 431:3-108, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§431:3-108 Reciprocal or reciprocal insurer.** [A]
12 Reciprocal, or reciprocal insurer means an unincorporated
13 aggregation of subscribers operating individually and
14 collectively through an attorney-in-fact common to all such
15 persons to provide reciprocal insurance among themselves."

16 SECTION 5. Section 431:7-204, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§431:7-204 In lieu provision.** (a) As to insurers, the
19 taxes and fees imposed by section 431:7-201 to section 431:7-
20 204, and the fees imposed by this code, when paid shall be in
21 settlement of and in lieu of all demands for taxes, licenses, or
22 fees of every character imposed by the laws of this State, the



1 ordinances or other laws, rules, or regulations of any county of
2 this State, except:

3 (1) As expressly otherwise provided;

4 (2) Taxes on real property;

5 (3) Taxes on the purchase, use, or ownership of tangible
6 personal property; ~~and~~

7 (4) Taxes on gross income, gross proceeds, gross rental,
8 or gross rental proceeds under chapter 237 or 237D[-];
9 and

10 (5) Each corporate or other attorney-in-fact of a
11 reciprocal insurer shall be subject to all taxes
12 imposed upon corporations or others doing business in
13 the state, other than taxes on income or gross
14 receipts derived from its principal business as
15 attorney-in-fact.

16 Nothing in this section shall be deemed to exempt insurers from
17 liability for withholding taxes payable by their employees and
18 paying the same to the proper collection officers, or from
19 keeping such records, and making such returns and reports, as
20 may be required in the case of other persons enjoying tax
21 exemption.



1 (b) As used in this section, "attorney-in-fact" means the
2 attorney-in-fact authorized to act for an unincorporated
3 aggregation of subscribers of a reciprocal insurer as a whole
4 and not for the benefit of an individual subscriber or group of
5 subscribers less than the entire membership of the reciprocal
6 insurer pursuant to section 431:3-108. For purposes of this
7 section, a reciprocal insurer and its attorney-in-fact shall be
8 considered a single entity."

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

11 SECTION 7. This Act shall take effect on July 1, 2008.



Report Title:

Reciprocal Insurers; Taxes

Description:

Clarifies that the income or gross receipts derived from the principal business of an attorney-in-fact for a reciprocal insurer are exempt from the general excise tax. (HB2248 HD1)

