
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 called "subscribers."
13 These subscribers act and exchange insurance contracts through
14 an attorney-in-fact common to all subscribers.

15 Section 431:3-108, Hawaii Revised Statutes, defines a
16 reciprocal insurer as "an unincorporated aggregation of
17 subscribers operating individually and collectively through an
18 attorney-in-fact common to all such persons to provide



1 reciprocal insurance among themselves." As a result, a
2 reciprocal insurer cannot conduct the business of insurance in
3 Hawaii without its attorney-in-fact.

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

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

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

21 (1) Ensures that when a reciprocal insurer is conducting
22 the business of insurance in Hawaii through its



1 attorney-in-fact, the reciprocal insurer and its
2 attorney-in-fact shall be considered a single entity
3 that qualifies for the general excise tax exemption
4 under section 237-29.7, Hawaii Revised Statutes;

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

9 (3) Clarifies that the attorney-in-fact of a reciprocal
10 insurer remains subject to all taxes imposed on
11 entities doing business in the State, other than the
12 general excise tax on its gross income as attorney-in-
13 fact.

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

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



1 investments in real property received by [~~insurance companies~~]
2 insurers after December 31, 1991, under written contracts
3 entered into before January 1, 1992, that do not provide for the
4 passing on of taxes or tax increases shall not be taxed until
5 the contracts are renegotiated, renewed, or extended."

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

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

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

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

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

20 "§431:7-204 **In lieu provision.** (a) As to insurers, the
21 taxes and fees imposed by [~~section~~] sections 431:7-201 to
22 [~~section~~] 431:7-204, and the fees imposed by this code, when



1 paid shall be in settlement of and in lieu of all demands for
2 taxes, licenses, or fees of every character imposed by the laws
3 of this State, the ordinances or other laws, rules, or
4 regulations of any county of this State, except:

- 5 (1) As expressly otherwise provided;
- 6 (2) Taxes on real property;
- 7 (3) Taxes on the purchase, use, or ownership of tangible
8 personal property; [~~and~~]
- 9 (4) Taxes on gross income, gross proceeds, gross rental,
10 or gross rental proceeds under chapter 237 or 237D[~~-~~];
11 and
- 12 (5) Each attorney-in-fact of a reciprocal insurer shall be
13 subject to all taxes imposed upon corporations or
14 others doing business in the State, other than taxes
15 on income or gross receipts under chapter 237 derived
16 from its principal business as attorney-in-fact.

17 Nothing in this section shall be deemed to exempt insurers from
18 liability for withholding taxes payable by their employees and
19 paying the same to the proper collection officers, or from
20 keeping [~~such~~] records, and making [~~such~~] returns and reports,
21 as may be required in the case of other persons enjoying tax
22 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. (SD1)

