
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 reciprocal insurers
2 are insurers or insurance companies as set forth in section
3 431:1-202, Hawaii Revised Statutes. Unlike stock or mutual
4 insurers that are incorporated entities, a reciprocal insurer is
5 an unincorporated association of individuals, partnerships, or
6 corporations, which are called "subscribers," who act and
7 exchange insurance contracts through an attorney-in-fact common
8 to all subscribers.

9 Accordingly, section 431:3-108, Hawaii Revised Statutes,
10 defines a reciprocal insurer as "an unincorporated aggregation
11 of subscribers operating individually and collectively through
12 an attorney-in-fact common to all such persons to provide
13 reciprocal insurance among themselves." As a result, a
14 reciprocal insurer cannot conduct the business of insurance in
15 Hawaii without its attorney-in-fact. Since the reciprocal
16 insurer cannot accomplish anything without its designated



1 attorney-in-fact, a reciprocal insurer and its attorney-in-fact
2 are virtually indistinguishable.

3 All authorized insurers are subject to the insurance
4 premium tax, which is imposed upon them in lieu of the general
5 excise and net income tax on the gross premiums received by the
6 insurers, pursuant to article 7 of chapter 431, Hawaii Revised
7 Statutes. For many years, insurance companies have been exempt
8 from paying general excise tax on gross premiums. This
9 exemption was enacted by the legislature in Act 141, Session
10 Laws of Hawaii 1935, and subsequently codified as section
11 237-23(a)(4), Hawaii Revised Statutes.

12 Act 286, Session Laws of Hawaii 1991, modified the general
13 excise tax exemption for insurance companies in section
14 237-29.7, Hawaii Revised Statutes, to specify that while the
15 gross income or gross proceeds of insurance companies authorized
16 to do business under chapter 431, Hawaii Revised Statutes, are
17 exempt from the general excise tax, this exemption does not
18 apply to gross income or gross proceeds from real property
19 rentals.

20 While chapter 431, Hawaii Revised Statutes, specifically
21 defines "insurer" in section 431:1-202, Hawaii Revised Statutes,
22 there is no definition of "insurance company" or "insurance



1 companies" anywhere in chapter 431, Hawaii Revised Statutes.
2 While "insurers" and "insurance companies" may refer to the same
3 thing, "insurers" and not "insurance companies" are authorized
4 to do business under chapter 431, Hawaii Revised Statutes. The
5 legislature finds that the ambiguous use of the term "insurance
6 companies" in section 237-29.7, Hawaii Revised Statutes, should
7 be corrected to accurately reflect application to "an insurer"
8 or "insurers" as defined in chapter 431, Hawaii Revised
9 Statutes.

10 Existing law has been interpreted so that the gross income
11 or gross proceeds earned by a reciprocal insurer's attorney-in-
12 fact for services rendered on behalf of a reciprocal insurer are
13 subject to the general excise tax because the attorney-in-fact
14 is not expressly defined as being part of a reciprocal insurer
15 under section 237-29.7, Hawaii Revised Statutes. That
16 definition has resulted in double taxation and the unfair
17 treatment of reciprocal insurers and their attorneys-in-fact,
18 who unlike their stock or mutual insurer counterparts, are not
19 exempt from the general excise tax, which in turn may ultimately
20 affect the premium rates paid by subscribers who are insured by
21 the reciprocal insurer.



1 The purpose of this Act is to recognize that a reciprocal
2 insurer and its attorney-in-fact shall be considered as a single
3 entity and shall not be subject to double taxation under Hawaii
4 law. Specifically, this Act:

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

11 (2) Clarifies that the general excise tax exemption
12 applies to insurers, and not insurance companies,
13 authorized to do business under chapter 431, Hawaii
14 Revised Statutes; and

15 (3) Makes other amendments for purposes of clarity and
16 consistency.

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

19 "[+]§237-29.7[+] **Exemption of [~~insurance companies~~]**
20 **insurers**. This chapter shall not apply to the gross income or
21 gross proceeds of [~~insurance companies~~] **insurers** authorized to
22 do business under chapter 431; except this exemption shall not



1 apply to any gross income or gross proceeds received after
2 December 31, 1991, as rents from investments in real property in
3 this State; provided that gross income or gross proceeds from
4 investments in real property received by [~~insurance companies~~]
5 insurers after December 31, 1991, under written contracts
6 entered into before January 1, 1992, that do not provide for the
7 passing on of taxes or tax increases shall not be taxed until
8 the contracts are renegotiated, renewed, or extended."

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

11 "**§431:1-202 Insurer defined.** Insurer means every person
12 engaged in the business of making contracts of insurance and
13 includes reciprocal insurers or interinsurance exchanges."

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

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

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



1 "**§431:7-204 In lieu provision.** (a) As to insurers, the
2 taxes and fees imposed by section 431:7-201 to section 431:7-
3 204, and the fees imposed by this code, when paid shall be in
4 settlement of and in lieu of all demands for taxes, licenses, or
5 fees of every character imposed by the laws of this State, the
6 ordinances or other laws, rules, or regulations of any county of
7 [~~this~~] the State, except:

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

21 Nothing in this section shall be deemed to exempt insurers from
22 liability for withholding taxes payable by their employees and



1 paying the same to the proper collection officers, or from
2 keeping [~~such~~] records, and making such returns and reports, as
3 may be required in the case of other persons enjoying tax
4 exemption.

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

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

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



Report Title:

Taxation; Insurance Companies; Exemption; General Excise Taxes

Description:

Recognizes that a reciprocal insurer and its attorney-in-fact shall be considered as a single entity for tax purposes and not be subject to general excise taxes in order to avoid the effect of double taxation. (SB2315 SD2)

