
A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAX.

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

1 SECTION 1. Of all sources of state revenues, the general
2 excise tax accounts for over fifty per cent of state revenue
3 realizations. Generally, the general excise tax is an efficient
4 tax assessed on businesses for the privilege of doing business
5 in Hawaii. The general excise tax's efficiency stems from its
6 broad-based application throughout the economy, coupled with its
7 low rate.

8 Over time, the general excise tax's efficiency has been
9 diminished due to the routine addition of tax exemptions for
10 particular businesses or industries. A majority of these
11 exemptions allow businesses that are otherwise very profitable
12 to avoid paying the general excise tax altogether. Because some
13 businesses pay no tax, they often do not register to do business
14 in Hawaii or file tax returns. Furthermore, out-of-state
15 businesses that claim exemption from the general excise tax also
16 fail to register, file, or otherwise expressly declare the
17 exemption. This lack of data on businesses operating in Hawaii
18 greatly undermines the department of taxation's ability to



1 gather information on businesses claiming tax benefits.
2 Requiring businesses to be "on the radar" of the department of
3 taxation will greatly assist in tax administration by providing
4 valuable information that the State may use in compliance
5 efforts.

6 Disallowing any general excise tax benefits unless basic
7 information is filed is rational and justifiable, especially
8 when tax benefits are a matter of legislative grace. In a time
9 when tax incentives are reviewed with scrutiny by policymakers
10 and administrators, it is important to ensure that businesses do
11 not avoid government tax-benefit oversight by assuming that
12 filing is unnecessary when no tax is due as a result of tax
13 benefits. Even when no tax is due, officials should have all
14 necessary data and information about persons conducting business
15 in Hawaii to test the effectiveness of the tax system and
16 accurately account for those that enjoy exemptions from it.

17 Additionally, though the general excise tax is a tax on
18 businesses, Hawaii businesses are allowed by law to pass on
19 their general excise tax costs to customers as a cost recovery.
20 However, as the economy has declined, more businesses have
21 failed to pay their general excise tax, even though the tax is
22 still visibly passed on to Hawaii consumers under the guise that



1 it would be paid to the government. Businesses that do not
2 timely remit the tax recovery amount are known to use these
3 funds to pay operating expenses, and some disreputable
4 businesses pocket these funds with no intention of paying their
5 taxes. In short, the practice of increasing consumer costs
6 under the pretext of tax recovery now becomes a consumer-
7 protection matter, and businesses should be liable for paying
8 those tax recovery amounts owed to the State. Especially since
9 more businesses are keeping these tax recovery amounts to cover
10 costs during this economic downturn, the government inevitably
11 becomes the last creditor to be paid.

12 To restore efficiency in Hawaii's general excise tax,
13 without increasing the tax rate, repealing exemptions, or
14 placing additional burdens on businesses other than what is fair
15 and reasonable, this Act strengthens the general excise tax by
16 requiring all businesses that enjoy excise tax exemptions to
17 register to do business in Hawaii, timely file their tax
18 returns, as well as expressly claim their entitlement. These
19 requirements ensure that the proper information is conveyed to
20 the State to monitor a tax exemption's cost and effectiveness.
21 Additionally, this Act creates a personal trust fund liability
22 for businesses that use the general excise tax as the basis for



1 increasing their prices, and ensures those funds are paid to the
2 State for the benefit of consumers and businesses.

3 SECTION 2. Chapter 237, Hawaii Revised Statutes, is
4 amended by adding two new sections to be appropriately
5 designated and to read as follows:

6 "§237- General excise tax benefits; mandatory denial of
7 tax benefits for failure to properly claim. (a)

8 Notwithstanding any other law to the contrary, a person shall
9 not be entitled to any general excise tax benefit under this
10 chapter unless the person claiming the general excise tax
11 benefit:

12 (1) Obtains a license to engage in and conduct business as
13 required under section 237-9;

14 (2) Files a tax return as provided under this chapter or
15 chapter 231 not later than twelve months from the due
16 date prescribed for the return; and

17 (3) Expressly claims general excise tax benefit on forms
18 prescribed by the director of taxation.

19 (b) The director may require any taxpayer to furnish
20 information to ascertain the validity of any general excise tax
21 benefit and may adopt rules pursuant to chapter 91 necessary to
22 effectuate the purposes of this section.



1 (c) A taxpayer shall not be denied a general excise tax
2 benefit for failing to comply with subsection (a) if:

3 (1) The provisions of the United States Constitution or
4 laws of the United States prohibit the requirements;
5 or

6 (2) The State does not otherwise have the power to impose
7 the requirements.

8 (d) The director may waive the denial of the general
9 excise tax benefit under subsection (a) if the failure to comply
10 is due to reasonable cause and not to the wilful neglect of the
11 taxpayer.

12 (e) Nothing in this section shall be interpreted as
13 limiting the application of section 237-22 in computing the tax
14 imposed under this chapter.

15 (f) For purposes of this section, "General excise tax
16 benefit" means any tax exemption, exclusion of a taxable amount,
17 a reduction from the measure of a tax imposed, a tax deduction,
18 a tax credit, a lower rate of tax, a segregation or division of
19 taxable amounts between multiple taxpayers involved in the same
20 transaction, or any income splitting allowed under this chapter.

21 §237- Certain amounts held in trust; liability of key
22 individuals. (a) There shall be personal liability for the



1 taxes imposed under this chapter as provided in this section for
2 the following amounts of gross income or gross proceeds:

3 (1) Any amount collected as a recovery of the taxpayer's
4 liability under this chapter, where the amount is
5 passed on as the tax owed by the taxpayer under this
6 chapter for the transaction and is separately stated
7 or accounted for in a receipt, contract, invoice,
8 billing, or other evidence of the business activity;
9 or

10 (2) An amount equal to an imputed tax liability under this
11 chapter on a transaction where a taxpayer does not
12 separately state or account for the amount as a tax
13 recovery as provided in paragraph (1). For purposes
14 of this paragraph, the amount of the imputed tax
15 liability is the result of multiplying the gross
16 income or gross proceeds received in the transaction
17 by the tax rate.

18 The amounts under paragraphs (1) and (2) shall be held in trust
19 for the benefit of the State and for payment to the State in the
20 manner and at the time required by this chapter.

21 (b) The personal liability under this section applies to
22 any officer, member, manager, or other person having control or



1 supervision over amounts of gross proceeds or gross income
2 collected for the purpose of payment of the general excise tax
3 and held in trust under subsection (a), or who is charged with
4 the responsibility for the filing of returns or the payment of
5 general excise tax on gross income or gross proceeds collected
6 and held in trust under subsection (a). The person shall be
7 personally liable for any unpaid taxes and interest and
8 penalties on those taxes, if such officer or other person
9 wilfully fails to pay or to cause to be paid any taxes due from
10 the taxpayer pursuant to this chapter.

11 For purposes of this subsection, "wilfully fails to pay or
12 to cause to be paid" shall be construed in accordance with
13 judicial interpretations given to similar provisions of the
14 Internal Revenue Code; consistent therewith, the term "wilfully"
15 shall mean a voluntary, intentional violation of a known legal
16 duty.

17 (c) The officer, member, manager, or other responsible
18 person shall be liable only for general excise taxes on gross
19 income or gross proceeds collected, plus interest and penalties
20 on those taxes, that became due during the period the person had
21 control, supervision, responsibility, or duty to act for the
22 taxpayer described in subsection (b) of this section.



1 (d) Persons liable under subsection (b) are exempt from
2 liability when nonpayment of the general excise tax on gross
3 income or gross proceeds held in trust is for good cause as
4 determined by the director.

5 (e) The voluntary or involuntary dissolution of the
6 taxpayer or the withdrawal or surrender of its right to engage
7 in business in this state shall not discharge the liability
8 hereby imposed."

9 SECTION 3. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun, before its effective date.

12 SECTION 4. New statutory material is underscored.

13 SECTION 5. This Act shall take effect on July 1, 2020, and
14 apply to gross income or gross proceeds received on or after its
15 effective date.



Report Title:

General Excise Tax; Exemption Requirement; Trust Fund Liability

Description:

Precludes a taxpayer from using a general excise tax benefit, including exemptions, deductions, lower rates, or income splitting, unless the taxpayer follows all administrative requirements. Creates trust fund liability for revenues collected by a business as a tax recovery. Takes effect July 1, 2020. (HB2595 HD1)

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