

JAN 25 2010

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 percent of state
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 what businesses are claiming which tax
2 benefits. Requiring businesses to be "on the radar" of the
3 Department of Taxation will greatly assist in tax administration
4 by providing valuable information that the government may use in
5 compliance 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 businesses do not
11 avoid government tax benefit oversight by assuming that filing
12 is unnecessary when no tax is due as a result of tax benefits.
13 Even when no tax is due, officials should have all necessary
14 data and information about persons conducting business in Hawaii
15 in order 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 intent on 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 government. Especially
9 since more businesses are keeping these tax recovery amounts to
10 cover costs during this economic downturn, the government
11 inevitably becomes the last creditor to be paid.

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

1 tax as the basis for increasing their prices, and ensures those
2 funds are paid to the State for the benefit of consumers and
3 businesses who ultimately pay these taxes.

4 This Act shall be known as the "General Fund Protection
5 Act of 2010."

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

9 **"§237-A General excise tax benefits; mandatory denial of**
10 **tax benefits for failure to properly claim.** (a)

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

15 (1) Obtain a license to engage in and conduct business as
16 required under section 237-9;

17 (2) File a tax return as provided under this chapter or
18 chapter 231 not later than twelve months from the due
19 date prescribed for the return; and

20 (3) Expressly make a claim for the general excise tax
21 benefit on the forms prescribed by the director of
22 taxation.

1 (b) The director may require any taxpayer to furnish
2 information to ascertain the validity of any general excise tax
3 benefit and may adopt rules necessary to effectuate the purposes
4 of this section.

5 (c) A taxpayer shall not be denied a general excise tax
6 benefit for failing to comply with subsection (a) where the
7 basis for failing to obtain a license, file a return, or
8 expressly claim an exemption was because such requirement cannot
9 be so legally required under the Constitution or laws of the
10 United States or the State is otherwise without the power to
11 impose the requirement.

12 (d) 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 (e) "General excise tax benefit" means any exemption,
16 exclusion of amount, reduction from the measure of tax imposed,
17 deduction, credit, lower rate, segregation or division of
18 amounts amongst multiple taxpayers involved in the same
19 transaction, or income split allowed under this chapter.

20 **§237-B Certain amounts held in trust; liability of key**
21 **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 section, 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) of this subsection
19 shall be held in trust for the benefit of the State and for the
20 payment of the same to the collector in the manner and at the
21 time required by this chapter.

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1 (b) The personal liability under this section applies to
2 any officer, member, manager, or other person having control or
3 supervision of gross proceeds or gross income collected and held
4 in trust under subsection (a), or who is charged with the
5 responsibility for the filing of returns or the payment of gross
6 income or gross proceeds collected and held in trust under
7 subsection (a). Such person shall be personally liable for any
8 unpaid taxes and interest and penalties on those taxes, if such
9 officer or other person wilfully fails to pay or to cause to be
10 paid any taxes due from 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 Title 26
14 of the United States Code; consistent therewith, the term
15 "wilfully" shall mean a voluntary, intentional violation of a
16 known legal 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 that became due during the
20 period the person had control, supervision, responsibility, or
21 duty to act for the taxpayer described in subsection (b) of this
22 section, plus interest and penalties on those taxes.

S.B. NO. 2748

1 (d) Persons liable under subsection (b) of this section
2 are exempt from liability in situations where nonpayment of the
3 gross income or gross proceeds held in trust is for good cause
4 as 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. In codifying the new sections added to chapter
13 237, Hawaii Revised Statutes, by section 2 of this Act, the
14 revisor of statutes shall substitute appropriate section numbers
15 used in the designations of those new sections in this Act.

16 SECTION 5. New statutory material is underscored.

17 SECTION 6. This Act shall take effect on July 1, 2010, and
18 apply to gross income or gross proceeds received on or after its
19 effective date.

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INTRODUCED BY:



BY REQUEST

Report Title:

General Excise Tax; Exemption Requirement; Trust Fund Liability

Description:

Precludes a taxpayer from utilizing 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.

JUSTIFICATION SHEET

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO GENERAL EXCISE TAX.

PURPOSE: To require taxpayers to follow all administrative requirements in order to claim general excise tax benefits, and create personal trust fund liability for general excise taxes collected.

MEANS: Add two new sections to chapter 237, Hawaii Revised Statutes.

JUSTIFICATION: Of all sources of state revenues, the general excise tax accounts for over fifty percent of state realizations. Generally, the general excise tax is an efficient tax assessed on businesses for the privilege of doing business in Hawaii. The general excise tax's efficiency stems from its broad based application throughout the economy, coupled with its low rate.

Over time, the general excise tax's efficiency has been diminished due to the routine addition of tax exemptions for particular businesses or industries. A majority of these exemptions allow businesses that are otherwise very profitable to avoid paying the general excise tax altogether. Because some businesses pay no tax, they often do not register to do business in Hawaii or file tax returns. Furthermore, out-of-state businesses that claim exemption from the general excise tax also fail to register, file, or otherwise expressly declare the exemption. This lack of data on businesses operating in Hawaii greatly undermines the Department of Taxation's ability to gather information on what businesses are claiming which tax benefits. Requiring businesses to be "on the radar" of the Department of

Taxation will greatly assist in tax administration by providing valuable information that the government may use in compliance efforts.

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

Additionally, though the general excise tax is a tax on businesses, Hawaii businesses are allowed by law to pass on their general excise tax costs to customers as a cost recovery. However, as the economy has declined, more businesses have failed to pay their general excise tax, even though the tax is still visibly passed on to Hawaii consumers under the guise that it would be paid to the government. Businesses that do not timely remit the tax recovery amount are known to use these funds to pay operating expenses, and some disreputable businesses pocket these funds with no intent on paying their taxes. In short, the practice of increasing consumer costs under the pretext of tax recovery now becomes a consumer protection matter, and businesses should be liable for paying those tax recovery amounts owed to the government. Especially since more businesses are keeping these tax recovery amounts to cover costs during this economic downturn, the government inevitably becomes the last creditor to be paid.

In order to restore efficiency in Hawaii's general excise tax, without increasing the tax rate, repealing exemptions, or placing additional burdens on businesses other than what is fair and reasonable, this measure strengthens the general excise tax by requiring all businesses that enjoy the tax exemption to register to do business in Hawaii, make a timely return for taxes, as well as expressly claim their entitlement. These requirements ensure proper information is conveyed to the government in order to monitor the tax exemption's cost and effectiveness. Additionally, this measure creates personal trust fund liability for businesses that use the general excise tax as the basis for increasing their prices, and ensures those funds are paid to the State for the benefit of consumers and businesses who ultimately pay these taxes.

Impact on the public: All taxpayers enjoying any general excise tax benefit must obtain a general excise tax license, file a return, and expressly claim the benefit. General excise taxpayers will have trust fund liability.

Impact on the department and other agencies: The Department of Taxation is responsible for administering the amendments to the tax laws contained in this measure.

GENERAL FUND:	Revenue gains as follows:
	FY 2011: \$15,000,000
	FY 2012: \$25,000,000
	FY 2013: \$35,000,000
	FY 2014: \$45,000,000
	FY 2015: \$45,000,000

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: TAX-100.

OTHER AFFECTED
AGENCIES:

None.

EFFECTIVE DATE:

Applies to gross income or gross proceeds
received on or after July 1, 2010.