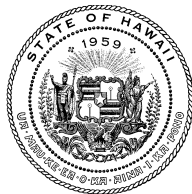


**SB 354**

LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LT. GOVERNOR



KURT KAWAFUCHI  
DIRECTOR OF TAXATION

SANDRA L. YAHIRO  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF TAXATION  
P.O. BOX 259  
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PHONE NO: (808) 587-1510  
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**SENATE COMMITTEE ON WAYS & MEANS  
TESTIMONY REGARDING SB 354  
RELATING TO THE GENERAL EXCISE TAX**

**TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)**

**DATE: FEBRUARY 5, 2009**

**TIME: 9:30AM**

**ROOM: 211**

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This legislation purports to exempt charity fundraising revenues from the general excise tax (GET).

The Department **supports the intent** of this measure; however due to the revenue impact of this measure, **cannot support passage at this time.**

**SUPPORT FOR EXEMPTING FUNDRAISING REVENUES FROM THE GET**—The State's GET is assessed on the gross proceeds or gross income of a business, including nonprofits. Though there exists a GET exemption for nonprofits, the exemption is rather narrow and does not apply to fundraising activities. The exemption does not apply to activities "the primary purpose of which is to produce income," which is exactly what fundraising is. Because charities rely heavily on fundraising to sustain, the Department is sympathetic to their plight and concurs that such amounts should be exempt from taxation. However, given the current law, the Department enforces it accordingly and amounts received from fundraising are not exempt from taxation.

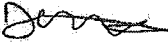
**TIMELY EXEMPTION WITH CHARITIES HURTING**—The Department points out that the recent economic downturn has hurt charities just as much, if not worse, than other industries. Charities are the last line of defense for many human services and without the contributions or donations received in the past, charities are barely surviving.

**CLARIFY THAT FUNDRAISING AMOUNTS ARE EXEMPT**—The Department has concerns with the current legislation and disagrees that, as written, it exempts fundraising only. The bill appears to exempt any charitable organization from the GET entirely. The Department suggests that the measure be clarified to exempt only fundraising activities, such as car washes or cookie sales, if this is the intent. Otherwise, this bill's revenue impact will be much higher.

**REVENUE IMPACT**—As stated, the Department supports exempting charities' fundraising activities from the GET. However, there is a large revenue impact for such exemption. This legislation will, **if amended to clarify that only fundraising activity is exempt**, will result in a revenue loss of approximately \$9.6 million per year.



COALITION FOR A  
TOBACCO-FREE HAWAII

To: Senator Donna Mercado Kim, Chair, Committee on Ways and Means  
Senator Shan S. Tsutsui, Vice Chair, Committee on Ways and Means  
Members, Senate Committee on Ways and Means  
From: Deborah Zysman, Executive Director   
Date: February 4, 2009  
Hrg: Senate Committee on Ways and Means on February 5, 2009 at 9:30 a.m.  
Re: **Support for SB 354, Relating to the General Excise Tax**

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Thank you for the opportunity to testify in support of SB 354 which provides that income produced from nonprofit activities will be exempt from the general excise tax.

The Coalition for a Tobacco Free Hawaii (Coalition) is the only independent organization in Hawaii whose sole mission is to reduce tobacco use through education, policy and advocacy. Our organization is a small nonprofit organization that works to create a healthy Hawaii through comprehensive tobacco prevention and control efforts.

SB 354 will help nonprofits in our State that do good work to help Hawaii's people. For example, if an organization holds a fundraiser, the entire amount raised from the event will support the organization's work. I encourage you to pass this measure out of Committee.

Thank you for the opportunity to testify on this matter.

## Gina Williams

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**From:** Kiersten Faulkner [Kiersten@historichawaii.org]  
**Sent:** Monday, February 02, 2009 10:09 AM  
**To:** WAM Testimony  
**Subject:** Support of SB354, Relating to the General Excise Tax

**To:** Senator Donna Mercado Kim, Chair  
Senator Shan S. Tsutsui, Vice Chair  
Committee on Ways and Means

**From:** Kiersten Faulkner  
Executive Director, Historic Hawai'i Foundation

**Committee Date:** Thursday, February 5, 2009  
9:30 a.m.  
Conference Room 211

**Subject:** **Support of SB354, Relating to the General Excise Tax**

On behalf of Historic Hawai'i Foundation, I am writing to support SB354, which exempts the general excise tax rate for fundraising activities by charitable organizations.

Historic Hawai'i Foundation (HHF) was organized in 1974 as a 501(c)(3) charitable organization for the purpose of preserving and encouraging the preservation of historic buildings, sites, objects and communities significant to the history of Hawai'i. HHF is a membership-based organization, with members and supporters across the Hawaiian Islands, as well as on the continental United States.

Like other Hawai'i non-profit organizations, HHF depends on contributions from individuals, businesses and organizations for the revenue that enables its programs. About two-thirds of the annual giving is related to the membership programs, grants for program services, or other mission-related income, and is exempt from GET. However, HHF also depends on an annual fundraising event that accounts for at least one-third of its annual operating budget. In addition to paying GET for all event expenses (e.g. printing, food and beverage, entertainment, supplies), the organization also pays GET on all donations and contributions related to the fundraising event.

The proposal to exempt donations that arise from fundraising activities from GET would be extremely helpful to our organization, as the full amount of the donor's gift would go directly to the program services. In this challenging economic environment, that additional income could mean the difference in whether or not a program continues.

Therefore, HHF supports SB354.

Kiersten Faulkner, AICP  
Executive Director  
Historic Hawai'i Foundation  
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# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** GENERAL EXCISE, Exempt fundraising income of nonprofit organizations

**BILL NUMBER:** SB 354

**INTRODUCED BY:** Slom

**BRIEF SUMMARY:** Amends HRS subsection 237-23(b) by adding a provision to paragraph (3) providing that income produced from activities of a charitable organization and defined in IRC section 467B-1 shall be exempt from the general excise tax.

**EFFECTIVE DATE:** July 1, 2009 applicable for tax years beginning after December 31, 2008

**STAFF COMMENTS:** It should be noted that the law requires organizations generally exempt from the general excise tax to pay the tax on income derived from activities that are primarily of an income producing nature and that are not directly related to the exempt mission or service of the organization. This is because the focus of the general excise tax is on the privilege of doing business in the state. Although the funds raised by these nonprofits are to benefit "good social or community causes," the sales of such goods or services are usually income producing and in direct competition with for-profit businesses.

As an example, Tax Information Release No. 89-6 was issued by the department of taxation on June 19, 1989 regarding the imposition of the general excise tax on fundraising activities of public school-sponsored groups. Effective July 1, 1989, the department of education established guidelines for public school-sponsored groups to deposit proceeds from fundraising activities into each school's non-appropriated checking account. As the proceeds from fundraisers by school-sponsored groups must be paid into, processed, and disbursed from the respective school's non-appropriated fund account, and the public schools are not subject to the 4% tax, such fundraising amounts are also not subject. The information release points out that such treatment does not extend to support groups, such as parent-teacher associations, booster clubs, class alumni associations, and other similar organizations which benefit or assist public schools that are subject to the tax on fundraisers regardless of whether or not the net proceeds are turned over to the public schools.

Thus, the enactment of this measure would run counter to the current interpretation and put fundraising activities directly in competition with those who are licensed to do business in the state and must pay the 4% general excise tax. To understand it from another perspective, if a nonprofit organization decided to sell Portuguese sausages as its weekly fundraiser, how would those sales affect the sales of Portuguese sausages at the local grocery store? If the product was sold at the same mark up, the sale by the nonprofit would be 4% cheaper if the exemption were granted. Is that then fair to the grocery store that will, no doubt, lose sales to the nonprofit? So while the income raised by fundraising sales will benefit the nonprofit, it comes at the expense of businesses that also sell the same or similar items.

Digested 2/3/09

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FEB - 4 2009

**THE SENATE  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009**

**COMMITTEE ON WAYS AND MEANS**

**Hearing February 5, 2009  
Testimony on S.B. 354  
(Relating to The General Excise Tax)**

Chair Kim, Vice-Chair Tsutsui, members of the Committee:

My name is Peter Fritz. I am an attorney specializing in tax law. I was also an Administrative Rules Specialist under Directors Kamikawa, Okamura and Kawafuchi. I am testifying as a taxpayer and concerned citizen.

This bill would exempt all income from the activities of an organization that is tax exempt under section 501(c)(3) of the Internal Revenue Code ("IRC") and for a broad scope of people, unincorporated businesses or corporations established for reasons such as benevolent, education, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic or other eleemosynary purposes.

I oppose this bill because:

1. Under this bill, the taxable unrelated business income of a charity would be exempt. Unrelated business income is derived from the activities of a business that is unrelated to the charity's charitable activities and is taxable under the income tax statute. This would result in inconsistent tax treatment since the income would not be taxed under Hawaii's General Excise Tax (GET) law.
2. Most other states tax the income from fundraising by a charitable organization. In the few circumstances when an exemption is allowed, it is limited by the dollars received, the price of the items sold or the number of times each year that a charity may hold a fund raising event. Without such limits, the revenue loss to Hawaii would be significant. (See Attached Chart)

Peter L. Fritz  
Testimony S.B. 354  
February 5, 2009

3. People would form nonprofit organizations or make an arrangement to operate a business so that the activities would not be taxed under the GET.

Thank you for the opportunity to testify.

Very truly yours,



Peter L. Fritz

State	501(c)(3)	501(c)(6)	Notes and Limits
Alabama	No	No	
Arkansas	Yes	Yes	No more than 3 times a year Purchase of item is incidental to actual purpose of making a charitable deduction All proceeds go to charitable organization
California		Generally not exempt	California does not exempt any specific group from tax on their fundraising sales. However, certain groups are statutory consumers when they meet certain conditions. As a consumer, the organization must pay tax on their purchases of tangible personal property; however their sales are not taxable. In general, the profit from the organization's sales must be used exclusively to further the organization's purpose.
Colorado	Yes	No	The events must be less than 12 days in any year and generate less than \$25,000 in net proceeds, or be selling food items exempt as groceries for home consumption.
Connecticut	Yes**	Yes**	*Sales of items for \$20.00 or less by accredited elementary and secondary schools or eleemosynary organizations formed to sponsor and support youth activities are exempt. Conn. Gen. Stat. §12-412(26).  ** In addition, sales of goods by non-profit organizations at up to five fundraising events or social events of one day's duration during any calendar year are exempt, without any limit on the sales price of such goods. Conn. Gen. Stat. § 12-412 (94); see also Special Notice 98(11), Exemption from Sales and Use Taxes of Sales By Nonprofit Organizations At Fundraising Or Social Events. Sales qualifying for this exemption do not include sales at retail establishments operated by nonprofit organizations.
Florida	No	No	Effective January 1, 2001, sales of tangible personal property by religious institutions having an established physical place for worship at which nonprofit religious services and activities are regularly conducted and carried on are exempt. See Section 212.08(7)(m), Florida Statutes (F.S.), and Chapter 2000-228, Laws of Florida (L.O.F.)  Effective January 1, 2001, organizations providing special educational, cultural, recreational, and social benefits to minors are exempt on sales of donated property. See Section 212.08(7)(l), F.S., and Chapter 2000-228, L.O.F
Idaho	No See Notes	No	Idaho Code 63-3622KK - Incidental Sales by Religious Corporations



Illinois	See Notes	See Notes	<p>Organizations having "E" numbers are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in part (a)(2)-(4) of the enclosed copy of 86 Ill. Adm. Code 130.2005.</p> <p>An exempt organization may engage in sales to members, noncompetitive sales, and "occasional dinners and similar activities" (this term allows exempt organizations two fundraisers per calendar year) without incurring Retailers' Occupation Tax liability. See Section 130.2005, subsections (a)(2)-(4), however, if exempt organizations engage in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), they must register with the Department as retailers, provide their suppliers with Certificates of Resale for the items they sell, and collect and remit to the Department the tax due.</p>
Iowa	Yes	No	Church groups are also included.
Kansas	See notes	See notes	<p>Fundraising sales by certain groups which are exempt from sales or use taxes include the following:</p> <p>I. Isolated or occasional sales by any group (K.S.A. 79-3606(1))</p> <p>1. all isolated or occasional sales of tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 79-3603 and amendments thereto;</p> <p>II. Sales by multidiscipline youth development programs (K.S.A. 79-3606(ii))</p> <p>ii. all sales of tangible personal property purchased directly by a nonprofit organization for nonsectarian comprehensive multidiscipline youth development programs and activities provided or sponsored by such organization, and all sales of tangible personal property by or on behalf of any such organization. This exemption shall not apply to tangible personal customarily used for human habitation purposes;</p> <p>III. Sales of admission pins, badges, etc. to any annual event sponsored by a 501(c)(3) organizations. (K.S.A. 79-3606(rr))</p> <p>rr. all sales of tangible personal property which will admit the purchaser thereof to any annual event sponsored by a nonprofit organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986;</p> <p>IV. Sales by various 501(c)(3) organizations. (K.S.A. 79-3606(vv))</p> <p>vv. all sales of tangible personal property purchased by any of the following organizations which are exempt from federal income taxation pursuant to section 501(c)(3) of the federal internal revenue code of 1986, for the following purposes, and all sales of any such property by or on behalf of any such organization for any such purpose:</p>

			<p>1. The American Heart Association, Kansas Affiliate, Inc. for the purposes of providing education, training, certification in emergency cardiac care, research and other related services to reduce disability and death from cardiovascular diseases and stroke;</p> <p>2. the Kansas Alliance for the Mentally Ill, Inc. for the purpose of advocacy for persons with mental illness and to education, research and support for their families;</p> <p>3. the Kansas Mental Illness Awareness Council for the purposes of advocacy for persons who are mentally ill and to education, research and support for them and their families;</p> <p>4. the American Diabetes Association Kansas Affiliate, Inc. for the purpose of eliminating diabetes through medical research, public education focusing on disease prevention and education, patient education including information on coping with diabetes, and professional education and training;</p> <p>5. the American Lung Association of Kansas, Inc. for the purpose of eliminating all lung diseases through medical research, public education including information on coping with lung diseases, professional education and training related to lung disease and other related services to reduce the incidence of disability and death due to lung disease;</p> <p>6. the Kansas chapters of the Alzheimer's Disease and Related Disorders Association, Inc. for the purpose of providing assistance and support to persons in Kansas with Alzheimer's disease, and their families and caregivers.</p> <p>V. Sales by a PTA or PTO (K.S.A. 79-3606(yy))</p> <p>yy. all sales of tangible personal property and services purchased by a parent-teacher association or organization, and all sales of tangible personal property by or on behalf of such association or organization;</p> <p>VI. Sales by 501(c)(3) food distribution organization (K.S.A. 79-3606(bbb))</p> <p>(bbb) all sales of food of human consumption by an organization which is exempt from federal income taxation pursuant to section 501 (c)(3) of the federal internal revenue code of 1986, pursuant to a food distribution program which offers such food at a price below cost in exchange for the performance of community service by the purchaser thereof.</p>
Kentucky	No	No	<p>Public Schools (K-12) - Exempt (1)</p> <p>Private Schools (K-12) - Exempt (1)</p> <p>School Groups (e.g., clubs, bands, teams) - Exempt (1)</p> <p>PTAs - Exempt</p> <p>PTOs - Exempt</p>

Maine	No	NO	Public Schools (K-12) - Exempt Private Schools (K-12) - Exempt School Groups (e.g., clubs, bands, teams) - Exempt PTAs - Exempt PTOs – Exempt
Maryland	Yes See note	No	Exempt if organization is religious in nature. A hospital thrift shops that sell only donated items, is operated by volunteers and contributes the profit to the hospital it is associated with is not required to collect the sales and use tax.
Massachusetts	No See note	No See note	There is no categorical exemption for fundraising sales of tangible personal property by any of the above. However, fundraising sales by any of the above groups may qualify as "casual and isolated sales", under G.L. c. 64H, § 6 (c) provided that the requirements of 830 CMR 64H.6.1 (Casual and Isolated Sales regulation) are met.
Michigan	See note	See note	Public Act 156 of 1994, as amended, exempts from sales tax the sale of tangible personal property for fund-raising purposes by certain organizations, if aggregate sales at retail for the calendar year are less than \$5,000. However, if sales are \$5,000 or greater, tax is required to be paid on all taxable sales. Nonprofit organizations making sales at retail are still required to register and obtain a sales tax license even if their total sales for the calendar year are less than \$5,000 and they have no tax liability. The organization would be placed on an annual reporting basis
Minnesota	See note	See note	Some organizations may be exempt if they meet certain requirements
Mississippi	No	No	
Missouri	Yes	Yes	No exemption for sales of certain products from sales and use tax,  Food products are taxable at a reduced rate in Missouri.
Nebraska	No	No	Public Schools (K-12) - Exempt Private Schools (K-12) - Exempt School Groups (e.g., clubs, bands, teams) - Exempt PTAs - Exempt PTOs - Exempt Other parent groups - Exempt (Parent Booster groups) (please identify) Church Groups - Not Exempt Youth Sports League - Not Exempt  A religious organization may hold one sale a year that lasts no more than 3days and the organization sells items that it owns
Nevada	See Note	See Note	Only those groups who hold a valid Nevada exemption for religious, charitable and educational organizations are exempt for fundraising purposes. The sale must be on behalf of the organization, with purchases of the goods being made by the organization.
New Jersey	Yes	No	Public Schools (K-12) - Exempt Private Schools (K-12) - Exempt School Groups (e.g., clubs, bands, teams) - Exempt PTAs - Exempt PTOs - Exempt Other parent groups - Exempt (Parent Booster groups) (please identify) Church Groups - Not Exempt Youth Sports League - Not Exempt

New Mexico	Yes	No	<p>Sales made by school-associated organizations are not subject to tax when the proceeds are used to support the school or the school's activities. This exemption does not include sales of meals to the general public.</p> <p>Religious organization must collect tax on sales to the general public or to its members. A religious organization may have one annual sale that is not taxed provided 1) the sale is an activity of the organization; 2) the sale lasts no more than three consecutive days; and 3) the organization sells items it owns.</p>
New York	See Note		<p>New York's sales and compensating use tax does not have a specific exemption for fund raising groups or sales. Rather, it provides a general exemption for any sale or amusement charge by a qualified exempt organization (generally IRC 501(c)(3) organizations) with the exception of:</p> <ul style="list-style-type: none"> <li>• sales of tangible personal property made at a shop or store operated by the organization;</li> <li>• sales of food or drink in or by a restaurant operated by the organization;</li> <li>• sales of hotel occupancy; and</li> <li>• sales of parking services.</li> </ul> <p>For more information on these exemptions, see New York Tax Law, Chapter 60, Article 28, Section 1116(a) and 1116(b). Also see Sales and Use Tax Regulations, Part 529.</p>
North Dakota	Yes See note	Yes See note	<p>Limitations on exemptions.</p> <ol style="list-style-type: none"> <li>1. The sale does not take place in a publicly owned facility or sales made in a publicly owned facility if the gross receipts from the event are \$5,000 or less. (If the gross receipts from an event held in a publicly owned facility are greater than \$5,000, the total gross receipts remain subject to sales tax.)</li> <li>2. The net receipts are used for a specific educational, religious or charitable purpose.</li> <li>3. The sales are not regular ongoing sales made in direct competition with retailers.</li> </ol>

Ohio	Yes See note	No	<p>Other organizations:  Public Schools (K-12) - Exempt  Private Schools (K-12) - Exempt  School Groups (e.g., clubs, bands, teams) - Exempt  PTAs - Exempt  PTOs - Exempt  Church Groups - Exempt  Youth Sports Leagues - Taxable</p> <p>Sales by churches and non-profit charitable organizations are not subject to tax unless the number of days on which such sales are conducted exceeds six in any calendar year. If so, subsequent sales are taxable. When counting sales made by different groups within a church or organization all shall be considered to be made by the church or organization.</p> <p>Exception - When sales are made by different groups within primary and secondary schools and by PTA's/PTO's, booster groups and similar organizations that raise money to support curricular or extra-curricular activities, all shall not be considered sales of the school. Effective July 1, 2007, upon the passing of HB 119, sales conducted by these organizations are not affected by the six days in a calendar year limitation.</p>
Oklahoma	Yes	No	<p>Other organizations:  Public Schools (K-12) - Exempt  Private Schools (K-12) - Exempt  School Groups (e.g., clubs, bands, teams) - Exempt  PTAs - Exempt  PTOs - Exempt  Church Groups - See 3  Youth Sports League: Exempt*</p> <p>*First \$15,000 of sales to or by youth athletic teams which are part of a 501(c)(4) organization.</p> <p>Not exempt from sales or use tax: The fundraising group (e.g., school, PTA, church); or the company distributing goods to the fundraising group. If the fundraising group has no sales tax permit, sale to the fundraising group is not exempt from sales tax.</p>

Pennsylvania	Yes See note		<p>Exceptions to or limitations on exemptions.</p> <p>Limits on number of fundraiser events per year</p> <p>Limits on duration of fundraisers</p> <p>Institutions of purely public charity, which includes charitable organizations, nonprofit educational institutions, religious organizations and volunteer firemen's organizations, which are registered with the Department of Revenue and hold an exemption number issued by the Department of Revenue, by regulation are permitted to make fund raising sales three times or for a total of seven days within a calendar year without collecting tax. The organization or institution is required to collect tax on sales made beyond that period of time.</p> <p>Other organizations  Public Schools (K-12) - Not exempt  Private Schools (K-12) - See 3  School Groups (e.g., clubs, bands, teams) - Not exempt  PTAs - Not exempt  PTOs - Not exempt  Church Groups - See 3  Youth Sports League - Not exempt  501 (c)(3) organizations - See 3</p>
Rhode Island	See note	See note	<p>No Exemptions Allowed with the Exception of:  Sale of items for not more than \$20 each by nonprofit Rhode Island Eleemosynary organizations for the purpose of youth activities, which the organization is formed to sponsor and support, and be accredited RI elementary and secondary schools for the purpose of those schools or of organized activities of their students.</p>
South Dakota	No	No	

Tennessee	See Note	See Note	<p>Exempt for Fundraising purposes</p> <p>Public Schools (K-12) exempt*</p> <p>Private Schools (K-12) exempt*</p> <p>School Groups (e.g., clubs, bands, teams) exempt*</p> <p>PTAs exempt*</p> <p>PTOs exempt*</p> <p>Other parent groups (please identify) exempt*</p> <p>Church Groups exempt**</p> <p>Youth Sports League exempt**</p> <p>501 (c)(3) organizations exempt**</p> <p>501 (c)(6) organizations exempt**</p> <p>* The public or private school or school support group will pay Tennessee sales or uses tax on tangible personal property purchased for sale at the fundraising event, but the resale of such property at the fundraising event is exempt from sales tax, so the school or school support group will not collect sales tax from the consumer. A school or school support group must obtain an exemption certificate from the Department of Revenue in order to make tax exempt purchases of tangible personal property for their own use. However, an exemption certificate should not be used to make tax exempt purchases of tangible personal property for resale at fundraising events (See Tenn. Code Ann. (67-6-102(28)(h) and Tenn. Comp. R. &amp; Regs. 1320-5-1-09)</p> <p><b>**Fundraising sales by these organizations, or any organization would be exempt from Tennessee sales tax if the tangible personal property is not regularly sold by the organization or is sold only during a temporary (30 consecutive days or less) sales period that occurs not more than 2 times each year. In such a case, the organization will pay sales tax on the purchase price of tangible personal property that it purchases for resale at the fundraising event. If the tangible personal property is regularly sold by the organization, or if the organization holds more than 2 temporary fundraising events each year, then all fundraising sales made by the organization during the year are subject to sales and use tax. (See Tenn. Code Ann. 67-6-102(8)(B) and Tenn. Comp. R. &amp; Regs. 1320-5-1-09 and 1320-5-1-51(2)</b></p>
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Texas	Yes See note	No	<p>The following are exempt:</p> <ul style="list-style-type: none"> <li>Public Schools (K-12) – exempt (See footnotes 1 and 4)</li> <li>Private Schools (K-12) – exempt (See footnotes 1, 3, and 4)</li> <li>School Groups (e.g., clubs, bands, teams) - exempt (See footnotes 1, 3, and 4)</li> <li>PTAs – exempt (See footnotes 1, 3, and 4)</li> <li>PTOs – exempt (See footnotes 1, 3, and 4)</li> <li>Other parent groups - exempt (See footnotes 1, 3, and 4)</li> <li>Church Groups - exempt (See footnotes 1, 3, and 4)</li> <li>Youth Sports League - not exempt (See footnote 2)</li> <li>501 (c)(3) organizations - exempt (See footnotes 1, 3, and 4)</li> <li>501 (c)(6) organizations – not exempt</li> <li>Other - Nonprofit senior citizens groups made up of persons aged 65 years and older are not required to collect or remit sales tax on the items they make and sell if there are not more than four sales per year and the total duration of the four sales does not exceed twenty days per year.</li> </ul> <p>Other - College or university student organizations affiliated with an institution of higher education can hold a one-day, tax-free sale each month. The organization must have a primary purpose other than engaging in business or performing an activity designed to make a profit, and the purpose of the sale must be to raise funds for the organization. The exemption does not apply to items sold for more than \$5,000 unless the item is manufactured by the organization, or the item is donated to the organization and not sold back to the donor.</p> <p>Footnotes –</p> <p>(1) Each chapter of an organization qualifying for sales tax exemption under the religious, educational or charitable category, as well as organizations exempted from sales tax based on their IRC Section 501 (c)(3), (4), (8), (10) or (19) status, can hold two one-day, tax-free sales or auctions each calendar year. During each one-day sale, the organization does not need to collect sales tax. For purposes of the exemption, one day is counted as 24 consecutive hours. The exemption does not apply to items sold for more than \$5,000 unless the item is manufactured by the organization, or the item is donated to the organization and not sold back to the donor.</p> <p>(2) The sales tax statute does not provide for youth athletic organizations, volunteer fire departments and chambers of commerce to hold the tax-free sales. Exemption from collecting tax, however, is possible if these organizations are also otherwise exempted from sales tax based on another qualifying exemption. For example, a youth athletic organization may have a federal exemption under IRC Section 501(c)(3) or a nonprofit volunteer fire department may have a federal exemption under IRC Section 501(c)(4). In that case, the youth athletic organization and the nonprofit volunteer fire department can hold the two one-day tax-free sales.</p> <p>(3) These organizations must apply to the Comptroller of Public Accounts for exempt status. Nonprofit organizations, including churches, nonprofit private schools, PTAs and PTOs, and 501 (c)</p>
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			<p>(3), (4), (8), (10) and (c) (19) entities do not automatically qualify for exemption from Texas sales and use tax.</p> <p>(4) In determining the responsibility for collecting sales tax on fund-raising activities, it is important to distinguish who is the actual seller of the taxable items. In many instances, the exempt nonprofit fund-raising entity, such as a PTA or school, enters into contracts with private entities to sell taxable items. The exempt nonprofit fund-raising entity takes orders and collects the money on the sales. After the exempt nonprofit fund-raising entity retains the agreed upon commission, the exempt nonprofit fund-raising entity forwards the sales proceeds to the actual seller of the goods. Under this type of agreement, the exempt nonprofit fund-raising entity is merely acting as a sales agent or representative for the seller, and sales tax must be collected. This is often the case for items such as school pictures, books, gift-wrap, etc. In these situations, the for profit retailer is responsible for collecting and remitting the tax. The exempt nonprofit fund-raising entity is not the seller, and the tax-free sale provisions do not apply. Sales tax is due from the purchaser, is collected by the exempt nonprofit fund-raising entity (agent), forwarded to the retailer (seller), and the retailer (seller) reports these sales on its sales tax return and remits the tax to the Comptroller.</p> <p>Here are some guidelines to determine when the exempt organization is the seller and not merely acting as an agent for a seller:</p> <p>* The exempt organization is the seller when it purchases sales inventory from a retailer for a certain price (first transaction) and then resells the taxable items at its own profit or loss for a price the exempt organization determines (second transaction). The exempt organization assumes all responsibility and risk.</p> <p>* The exempt organization is the seller when it does not share or split the proceeds with the retailer/distributor or retain a "commission."</p>
Utah	Yes See note	No	<p>Other organizations and notes</p> <p>Public Schools (K-12) - Exempt (1)  Private Schools (K-12) - Exempt (1)  School Groups (e.g., clubs, bands, teams) - Exempt (1)  PTAs - Exempt (2)  PTOs  Church Groups  Youth Sports League  501 (c)(3) organizations - Exempt (3)  501 (c)(6) organizations</p> <p>1. Public/private schools grades K-12 only - sale, use of funds restricted – see Utah Code Annotated 59-12-102(28)  2. PTA exempt as 501 (c) (3)  3. 501 (c) (3) organizations must also obtain sales tax exemptions # from tax commission. See Administrative Rule R865-19S-43</p>

Utah	Yes See note	No	<p>Other organizations</p> <p>Public Schools (K-12) - Exempt (1)  Private Schools (K-12) - Exempt (1)  School Groups (e.g., clubs, bands, teams) - Exempt (1)  PTAs - Exempt (2)  PTOs</p> <p>1. Public/private schools grades K-12 only - sale, use of funds restricted - see  2. Utah Code Annotated 59-12-102(28) PTA exempt as 501 (c) (3)  3. 501 (c) (3) organizations must also obtain sales tax exemptions # from tax commission. See Administrative Rule R865-19S-43</p>
Washington	Yes	Yes	<p>Most nonprofit organizations, including those listed in your survey, are exempt from tax on periodic fundraising activities. For tax purposes, the term "fundraising activity" does not include the operation of a regular place of business. Generally, the operation of a regular place of business by a nonprofit organization results in a sales tax collection obligation.</p> <p>Nonprofit organizations" exempt from sales tax collection responsibilities on qualifying fundraising activities include organizations exempt from tax under sections 501(c)(3),(4), and (5) of the Internal Revenue Code; organizations that would qualify for tax exemption under these codes if organized as a nonprofit corporation; and nonprofit organizations that do not pay members, stockholders, officers, directors, or trustees any amounts from its gross income except as payment for services rendered, do not pay more than reasonable compensation to any person for services rendered, and do not engage in a substantial amount of political activity.</p>
West Virginia	Yes		<p>Limits on number of fundraiser events per year - 6 times per year (12 mo. period)</p> <p>Limits on duration of fundraisers - no more than 84 consecutive hours.</p> <p>Public Schools (K-12) - exempt  Private Schools (K-12) - exempt  School Groups (e.g., clubs, bands, teams) - exempt  PTAs - exempt  PTOs - exempt  Church Groups - exempt  Youth Sports League - exempt  501 (c)(3) organizations - exempt  501 (c)(6) organizations - exempt</p>

Wisconsin	Yes		<p>Public Schools (K-12) - Exempt (See Note 1)  Private Schools (K-12) - Exempt (See Note 1)  School Groups (e.g., clubs, bands, teams) - Exempt (See Note 2)  PTAs - Exempt (See Note 2)  PTOs - Exempt (See Note 2)  Church Groups - Exempt (See Note 2)  Youth Sports League - Exempt (See Note 2)  501 (c)(3) organizations - Exempt (See Note 2)  501 (c)(6) organizations - Exempt (See Note 2)</p> <p>Note 1. Assumes (1) sales are of tangible personal property and school is an elementary or secondary school exempted from payment of income or franchise tax under Chapter 71, Wis. Stats., or (2) sales are of tickets or admissions to public and private elementary and secondary school activities, where the entire net proceeds therefrom are expended for educational, religious, or charitable purposes.</p> <p>Note 2. Assumes (1) group is a nonprofit organization which does not hold and is not required to hold a Wisconsin seller's permit, (2) group's sales of tangible personal property and taxable services occur on 20 days or less during the year or are \$25,000 or less during the year, and (3) sales do not involve entertainment for which payment in the aggregate exceeds \$500 for performing or reimbursement of expenses, unless access to the event may be obtained without payment of a direct or indirect admission fee.</p>



February 4, 2009

Chair Donna Mercado Kim  
Senate Ways and Means Committee  
Hawaii State Senate  
State Capitol, Room 210  
Honolulu, HI 96813

RE: Senate Bill 354, Relating to GET Exemption for Charitable Organizations

Dear Chair Kim and members of the Senate Ways and Means Committee:

If the intent of SB 354 is to exempt charitable organizations from paying General Excise tax on fundraising revenue, then the Hawai'i Alliance of Nonprofit Organizations supports the intent of this bill.

With government and private sector support to nonprofit organizations eroding in this current economy, general excise tax relief would be welcomed to help maintain fragile budgets, build capacity and maintain the social fabric of Hawai'i.

Hawai'i's nonprofit sector employs nearly 50,000 people, rivaling the number of state government employees, with expenditures of an estimated \$5.4 billion in 2007, making it a significant economic driver for the state of Hawai'i. The intent of this bill would help ensure the continued viability of the sector.

HANO unites and strengthens the nonprofit sector as a collective force to improve the quality of Hawai'i. It works in the areas of leadership and convenings, advocacy and public policy, research and information, communications, professional development and products and services for its members.

Thank you for the opportunity to testify.

Mahalo,

Lisa Maruyama  
President and CEO