

JAN 21 2011

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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The legislature finds that Act 155, Session  
2 Laws of Hawaii 2010, was enacted to "restore efficiency in  
3 Hawaii's general excise tax, without increasing the tax rate,  
4 repealing exemptions, or placing additional burdens on  
5 businesses other than what is fair and reasonable...".

6           To accomplish this, Act 155 requires all businesses that  
7 enjoy excise tax exemptions to register to do business in  
8 Hawaii, file their tax returns in a timely manner, and expressly  
9 claim their entitlement. In addition, Act 155 creates a  
10 personal trust liability for businesses that use the general  
11 excise tax as the basis for increasing their prices to ensure  
12 that those funds are paid to the State for the benefit of  
13 consumers and businesses.

14           The legislature further finds that while the projected  
15 revenue increase has yet to be determined, implementation of the  
16 provisions of Act 155 has had a decidedly negative - and  
17 unintended - impact on many Hawaii taxpayers. Changes in the  
18 administration of the general excise tax have caught taxpayers



1 unawares and the legislation fails to provide for basic taxpayer  
2 protections and due process.

3 Act 155 provides for a forfeiture of any general excise tax  
4 benefits (exemptions, deductions, income splitting, credits,  
5 wholesale rates) when a taxpayer fails to file the annual form  
6 G-49 within twelve months of its due date. This forfeiture due  
7 to a filing omission is without precedent under the general  
8 excise tax statute and will catch many unawares. The general  
9 excise tax law already requires periodic filings and payment,  
10 with the purpose of the annual return being to reconcile these  
11 periodic filings. Many taxpayers, after filing all of the  
12 necessary periodic returns, think of the annual form as a mere  
13 formality. The statute of limitations on assessment does not  
14 begin to run until the filing of the annual return, even though  
15 all periodic returns have been filed and payments made. Now  
16 there is a complete deprivation of benefits for this failure.

17 As the law reads, taxpayers failing to file the form G-49  
18 would no longer be able to claim refunds of the general excise  
19 tax paid within the statutory period, or even to claim benefits  
20 in defense against audits. Many nonprofits and other exempt  
21 organizations are typically confused about when the general  
22 excise tax applies or does not apply to gross revenues, and are



1 susceptible to losing the general excise tax exemptions for  
2 significant revenue streams, i.e., school tuition. The severe  
3 penalty imposed by Act 155 is out of proportion to its stated  
4 purpose: to capture relevant information on claims for the  
5 general excise tax benefits.

6 In addition, imposing personal liability on responsible  
7 persons for an entity's unpaid general excise tax raises concerns  
8 similar to those above. While well intended, Act 155 has created  
9 an administrative and compliance nightmare, with little  
10 information to show actual revenue benefits.

11 In 2010, the senate committee on economic development and  
12 technology and the house committee on economic revitalization,  
13 business, and military affairs convened an informal small  
14 business discussion group to address the most critical issues  
15 facing the small business sectors within Hawaii's economy.  
16 Representatives from the Chamber of Commerce of Hawaii,  
17 construction and trades industries, community nonprofits, the  
18 agricultural sector, food and restaurant industries, retailing,  
19 the science and technology sector, the commercial transportation  
20 industry, and interested stakeholders developed a package of  
21 bills that address the most pressing problems facing Hawaii's  
22 small business community.



1           The purpose of this Act is to support the findings of the  
2 small business working group and recommendations to repeal Act  
3 155, Session Laws of Hawaii 2010.

4           SECTION 2. Act 155, Session Laws of Hawaii 2010, is  
5 repealed.

6           SECTION 3. This Act shall take effect upon its approval.

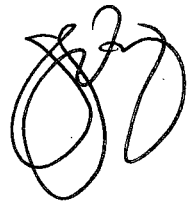
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**Report Title:**

Taxation; General Excise Tax; Repeal

**Description:**

Repeals Act 155, Session Laws of Hawaii 2010, which requires all businesses with excise tax exemptions to register to do business in Hawaii, file their tax returns in a timely manner, and expressly claim their entitlement, and creates a personal trust liability for businesses that use the general excise tax as the basis for increasing their prices and ensures that those funds are paid to the State for the benefit of consumers and businesses.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

