

JAN 24 2013

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**A BILL FOR AN ACT**

RELATING TO DENIAL OF GENERAL EXCISE TAX BENEFITS.

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

1           SECTION 1. Section 237-9.3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§237-9.3 General excise tax benefits; denial of tax**  
4 **benefits for failure to properly claim.** (a) Notwithstanding  
5 any other law to the contrary, a person shall not be entitled to  
6 any general excise tax benefit under this chapter unless the  
7 person claiming the general excise tax benefit:

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

10          (2) Files the annual general excise tax reconciliation tax  
11          return as provided under this chapter or chapter 231  
12          not later than twelve months from the due date  
13          prescribed for the return.

14          (b) The director may require any taxpayer to furnish  
15 information to determine the validity of any general excise tax  
16 benefit and may adopt rules pursuant to chapter 91 necessary to  
17 effectuate the purposes of this section.

1 (c) The director may waive the denial of the general  
2 excise tax benefit under subsection (a) if the failure to comply  
3 is due to reasonable cause and not to the wilful neglect of the  
4 taxpayer.

5 (d) The director shall first give written notice to a  
6 nonprofit organization to comply with the requirements of this  
7 section before imposing a denial of any general excise tax  
8 benefit under this chapter, and the organization shall have  
9 ninety days from the date of the receipt of the notice to comply  
10 with the requirements.

11 (e) For purposes of this section:

12 "General excise tax benefit" means any tax exemption,  
13 exclusion of a taxable amount, a reduction from the measure of a  
14 tax imposed, a tax deduction, a tax credit, a lower rate of tax,  
15 a segregation or division of taxable amounts between multiple  
16 taxpayers involved in the same transaction, or any income  
17 splitting allowed under this chapter.

18 "Nonprofit organization" means a corporate entity,  
19 association, or other duly chartered entity that is registered  
20 with the State [~~and has received a written determination from~~  
21 ~~the Internal Revenue Service that it is exempt under section~~  
22 ~~501(e)(3), section 501(e)(4), section 501(e)(8), or so much of~~  
23 ~~section 501(e)(2) as applied to title holding entities that turn~~

1 ~~ever their income to organizations that are exempt under section~~  
2 ~~501(e)(3), section 501(e)(4), or section 501(e)(8) of the~~  
3 ~~Internal Revenue Code.] and is exempt from the application of~~  
4 chapter 237 under section 237-23(a)(3), (4), (5), (6), or (7).

5 SECTION 2. Section 237-41.5, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

7 "(b) The personal liability under this section applies to  
8 any officer, member, manager, or other person having control or  
9 supervision over amounts of gross proceeds or gross income  
10 collected to pay the general excise tax and held in trust under  
11 subsection (a), or who is charged with the responsibility for  
12 the filing of returns or the payment of general excise tax on  
13 gross income or gross proceeds collected and held in trust under  
14 subsection (a). The person shall be personally liable for any  
15 unpaid taxes and interest and penalties on those taxes, if such  
16 officer or other person wilfully fails to pay or to cause to be  
17 paid any taxes due from the taxpayer pursuant to this chapter.

18 This subsection shall not apply to any officer, manager, or  
19 other person having control or supervision over amounts of gross  
20 proceeds or gross income collected to pay the general excise tax  
21 and held in trust under subsection (a), or who is charged with  
22 the responsibility for the filing of returns or the payment of  
23 general excise tax on gross income or gross proceeds collected

1 and held in trust under subsection (a) for a nonprofit  
2 organization.

3 For purposes of this subsection:

4 "Nonprofit organization" means a corporate entity,  
5 association, or other duly chartered entity that is registered  
6 with the State [~~and has received a written determination from~~  
7 ~~the Internal Revenue Service that it is exempt under section~~  
8 ~~501(c)(3), section 501(c)(4), section 501(c)(8), or so much of~~  
9 ~~section 501(c)(2) as applied to title holding entities that turn~~  
10 ~~over their income to organizations that are exempt under section~~  
11 ~~501(c)(3), section 501(c)(4), or section 501(c)(8) of the~~  
12 ~~Internal Revenue Code.] and is exempt from the application of  
13 chapter 237 under section 237-23(a)(3), (4), (5), (6), or  
14 (7)."~~

15 "Wilfully fails to pay or to cause to be paid" shall be  
16 construed in accordance with judicial interpretations given to  
17 similar provisions of the Internal Revenue Code; consistent  
18 therewith, the term "wilfully" shall mean a voluntary,  
19 intentional violation of a known legal duty."

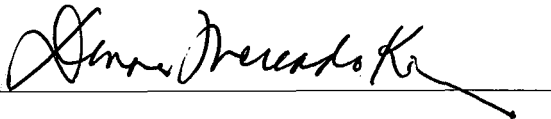
20 SECTION 3. This Act does not affect rights and duties that  
21 matured, penalties that were incurred, and proceedings that were  
22 begun before its effective date.

S.B. NO. 1185

1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act, upon its approval, shall take effect  
4 on July 1, 2013.

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INTRODUCED BY: 

BY REQUEST

**Report Title:**

General Excise Tax; Nonprofit Organizations

**Description:**

Mandates that nonprofit organizations receive notice before denial of general excise tax benefit; limits liability of persons having control of certain amounts held in trust for nonprofit organizations; and defines "nonprofit organization".

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

JUSTIFICATION SHEET

DEPARTMENT: Taxation.

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

PURPOSE: To provide 90 days' notice for certain nonprofit entities under section 237-23(a), Hawaii Revised Statutes (HRS), before denying General Excise Tax benefits for noncompliance under section 237-9.3, HRS; and to exempt any officer, member, manager, or other person having control or supervision over amounts of gross proceeds or gross income of certain nonprofit entities under section 237-23(a), HRS, from the personal liability provisions of section 237-41.5, HRS.

MEANS: Amend sections 237-9.3(e) and 237-41.5(b), HRS.

JUSTIFICATION: Sections 237-9.3(a) and 237-41.5(b), HRS, define "nonprofit organization" in reference to section 501 of the Internal Revenue Code. Since both sections involve General Excise Tax, the definition of "nonprofit organization" should be aligned with the section in chapter 237, HRS, which sets forth the General Excise Tax exempt entities for consistency.

Impact on the public: Uniform application of sections 237-9.3 and 237-41.5, HRS, to General Excise Tax exempt nonprofit organizations.

Impact on the department and other agencies: Defining "nonprofit organization" so that it is consistent with section 237-23, HRS, will allow for a clear determination as to which entities are covered under the two amended sections.

GENERAL FUND: Pending.

OTHER FUNDS:                   None.

PPBS PROGRAM  
DESIGNATION:                   None.

OTHER AFFECTED  
AGENCIES:                   None.

EFFECTIVE DATE:               July 1, 2013.