

JAN 26 2022

A BILL FOR AN ACT

RELATING TO NONPROFIT ORGANIZATIONS.

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

1 SECTION 1. The legislature finds that the federal
2 government exempts nonprofit organizations from federal income
3 tax because these organizations provide communities with
4 critically needed programs, goods, and services, many of which
5 would otherwise be provided by government agencies and,
6 therefore, taxpayers. However, the federal government does not
7 exempt from federal income tax income of nonprofit organizations
8 that is generated by an unrelated business activity not
9 substantially related to the nonprofit organization's tax-exempt
10 purpose.

11 The legislature further finds that, like the federal income
12 tax law, the State provides an exemption from the general excise
13 tax for income generated by a nonprofit organization's
14 charitable activities. Similar to the spirit and intent of the
15 federal "unrelated business income" tax provision, state law
16 does not exempt from general excise tax income of nonprofit
17 organizations that is generated by activity "the primary purpose



1 of which is to produce income even though the income is to be
2 used for or in furtherance of the exempt activities" of the
3 nonprofit organization.

4 The legislature further finds that because the State's
5 general excise tax law referring to "the primary purpose of
6 which is to produce income" does not align with the federal
7 "unrelated business income" provision, nonprofit organizations
8 have additional burdens in accounting for income in disparate
9 ways. While the federal law is clear with an extensive body of
10 interpretation, there remains ambiguity with the state general
11 excise tax provision. More significantly, federal income tax
12 law does not consider fundraising income as unrelated business
13 income and, therefore, such income is not subject to federal
14 income tax. However, state law has been interpreted to regard
15 fundraising income as subject to the general excise tax.

16 The legislature further finds that imposing the general
17 excise tax on a nonprofit organization's fundraising income
18 deprives the nonprofit sector of needed financial support for
19 the delivery of program services. Since the general excise tax
20 is imposed on gross income, nonprofit organizations are taxed on
21 fundraising income without deduction for any costs related to



1 those fundraising activities, such as room rentals, food and
2 beverage service, marketing, and other expenses, resulting in a
3 financial "double whammy" on nonprofit organizations.

4 The purpose of this Act is to align the state general
5 excise tax law with the federal income tax code by exempting
6 from the State's general excise tax, income generated by a
7 nonprofit organization for any activity defined as an "unrelated
8 trade or business" as defined by the Internal Revenue Code.
9 This Act expands the general excise tax exemptions available to
10 charitable, religious, and educational organizations and is not
11 intended to limit or restrict any currently available tax
12 exemptions. Furthermore, this Act does not affect rental income
13 generated by an unrelated trade or business, which will continue
14 to be subject to the general excise tax.

15 SECTION 2. Section 237-23, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

17 "(b) The exemptions enumerated in subsection (a)(3) to (7)
18 shall apply only:

19 (1) To those persons who shall have registered with the
20 department of taxation by filing a written application
21 for registration in such form as the department shall



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1 prescribe, shall have paid the registration fee of
2 \$20, and shall have had the exemption allowed by the
3 department or by a court or tribunal of competent
4 jurisdiction upon appeal from any assessment resulting
5 from disallowance of the exemption by the department;

6 (2) To activities from which no profit inures to the
7 benefit of any private stockholder or individual,
8 except for death or other benefits to the members of
9 fraternal societies; and

10 (3) To the fraternal, religious, charitable, scientific,
11 educational, communal, or social welfare activities of
12 such persons, or to the activities of hospitals,
13 infirmaries, sanitarium, and potable water companies,
14 as such, ~~[and not to any activity the primary purpose~~
15 ~~of which is to produce income even though the income~~
16 ~~is to be used for or in furtherance of the exempt~~
17 ~~activities of such persons.]~~ but not to any activity
18 defined as an "unrelated trade or business" as defined
19 in section 513 of the Internal Revenue Code; provided
20 that in considering whether an activity is an
21 "unrelated trade or business", the modifications to



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1 unrelated business taxable income as provided in
2 section 512(b) of the Internal Revenue Code shall not
3 apply."

4 SECTION 3. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval.

7

INTRODUCED BY:





S.B. NO. 3201

Report Title:

Nonprofit Organizations; GET; Exemption; Unrelated Trade or Business Activities

Description:

Clarifies the GET exemption for unrelated trade or business activities of nonprofit organizations.

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