

A Bill for an Act Relating to General Excise Tax on Nonprofit Organizations.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 237-23, Hawaii Revised Statutes, is amended to read as follows:

“§237-23 Exemptions, persons exempt, applications for exemption. (a) This chapter shall not apply to the following persons:

- (1) Public service companies (as that term is defined in section 239-2), with respect to the gross income, either actual gross income or gross income estimated and adjusted, which is included in the measure of the tax imposed by chapter 239;
¹Public utilities owned and operated by the State or any county or other political subdivision thereof;
- (3) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services, or other benefits to the members of such societies, orders, or associations, and to their dependents;
- (4) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended, as well as that of operating a prepaid legal services plan, as well as that of operating or managing a homeless facility, or any other program for the homeless authorized under chapter 201G, part IV;
- (5) Business leagues, chambers of commerce, boards of trade, civic leagues, agricultural and horticultural organizations, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare which shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;
- (6) Hospitals, infirmaries, and sanitararia;
- (7) Cooperative associations incorporated under chapter 421 or Code section 521 cooperatives which fully meet the requirements of section 421-23, except Code section 521 cooperatives need not be organized in Hawaii; provided that:
 - (A) The exemption shall apply only to the gross income derived from activities which are pursuant to purposes and powers authorized by chapter 421, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;
 - (B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all such persons shall be so taxable; and

(C) As used in this paragraph, “section 521 cooperatives” mean associations which qualify as a cooperative under section 521 (with respect to exemption of farmers’ cooperatives from tax) of the Internal Revenue Code of 1986, as amended;

- (8) Persons affected with Hansen’s disease and kokuas, with respect to business within the county of Kalawao;
 - (9) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual (provided that the exemption shall apply only to the activities of such persons in the conduct of cemeteries and not to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of such persons); and
 - (10) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations.
- (b) The exemptions enumerated in subsection (a)(3) to (6) shall apply only:
- (1) To those persons who shall have registered with the department of taxation by filing a written application for registration in such form as the department shall prescribe, shall have paid the registration fee of \$20, and shall have had the exemption allowed by the department or by a court or tribunal of competent jurisdiction upon appeal from any assessment resulting from disallowance of the exemption by the department; ~~and~~
 - (2) To activities from which no profit inures to the benefit of any private stockholder or individual, except for death or other benefits to the members of fraternal societies; and
 - (3) To the fraternal, religious, charitable, scientific, educational, communal, or social welfare activities of such persons, or to the activities of such hospitals, infirmaries, and sanitarium as such, and not to any activity the primary purpose of which is to produce income even though the income is to be used for or in furtherance of the exempt activities of such persons.
- (c) ~~In order to~~ To obtain allowance of an exemption:
- (1) A person under subsection (a)(3) to (6), who has received or applied for recognition of tax exempt status under section 501(c)(3), (4), (6), or (8) of the Internal Revenue Code of 1986, as amended, or who is a subordinate person of a person who has received a group exemption letter under section 501(c)(3), (4), (6), or (8) of the Internal Revenue Code of 1986, as amended, shall register with the department by filing a statement attaching a copy of the exemption or application for recognition of exempt status and any particular facts that the department may require; and
 - (2) All other persons under subsection (a)(3) to (6) shall file an application for exemption [shall be filed] in the form of an affidavit or affidavits setting forth in general all facts affecting the right to the exemption and such particular facts as the department may require, to which shall be attached such records, papers, and other information as the department may prescribe. [The]
- (d) For all persons, the statement registering the person with the department or application for exemption shall be filed on or before March 31 of the first year of registration or within three months after the commencement of business. In the event of allowance of the exemption, no further statement or application therefor need be filed unless there is a material change in the facts. In the event of disallowance of the

ACT 125

exemption, a license may be obtained upon payment of the required fee as provided by section 237-9, less the \$20 already paid under this section, which shall be credited thereon. In the event the registrant has a license under this chapter, no further fee shall be required for registration under this section.

~~[(d)] (e)~~ The department for good cause may extend the time for registration or the time for filing an application for exemption~~[-, but the extension or extensions shall not aggregate more than a total of two months].~~''

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

SECTION 3. This Act shall take effect on July 1, 2001.

(Approved May 18, 2001.)

Note

1. So in original.