
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 the federal
3 income 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 any income of nonprofit organizations that is generated
8 by an unrelated business activity not substantially related to
9 the nonprofit organization's tax-exempt purpose.

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



1 used for or in furtherance of the exempt activities" of the
2 nonprofit organization.

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

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



1 service, marketing, and other expenses, resulting in a financial
2 "double whammy" on nonprofit organizations.

3 The purpose of this Act is to align the state general
4 excise tax law with the federal income tax law by exempting from
5 the State's general excise tax, the fundraising income generated
6 by a tax-exempt nonprofit organization, while retaining the
7 general excise tax for gross income derived from any "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



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.]; provided that gross
18 income derived from any "unrelated trade or business",
19 as defined in section 513 of the Internal Revenue
20 Code, shall not be exempt under this section; provided
21 further that, in considering whether an activity is an



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

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

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



Report Title:

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

Description:

Clarifies the application of the general excise tax law with regard to gross income derived from unrelated trade or business activities of nonprofit organizations. (SD1)

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