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 further 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, state general

15   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 also finds that because the State's general

4 excise tax law referring to "the primary purpose of which is to

5 produce income" does not align with the federal "unrelated

6 business income" provision, nonprofit organizations have

7 additional burdens in accounting for income in disparate ways.

8 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 additionally finds that imposing the

16 general excise tax on a nonprofit organization's fundraising

17 income deprives the nonprofit sector of needed financial support

18 for the delivery of program services. Since the general excise

19 tax is imposed on gross income, nonprofit organizations are

20 taxed on fundraising income without deduction for any costs

21 related to those fundraising activities, such as room rentals,

1 food and beverage services, marketing, and other expenses,

2 resulting in a financial "double whammy" on nonprofit

3 organizations.

4   The purpose of this Act is to align the state general

5 excise tax law with the federal income tax law by exempting from

6 the State's general excise tax, the fundraising income generated

7 by a tax-exempt nonprofit organization, while retaining the

8 general excise tax for gross income derived from any "unrelated

9 trade or business", as defined by the Internal Revenue Code.

10 This Act expands the general excise tax exemptions available to

11 charitable, religious, and educational organizations and is not

12 intended to limit or restrict any existing available tax

13 exemptions. Furthermore, this Act does not affect rental income

14 generated by an unrelated trade or business, which will continue

15 to be subject to the general excise tax.

16   SECTION 2. Section 237-23, Hawaii Revised Statutes, is

17 amended by amending subsection (b) to read as follows:

18   "(b) The exemptions enumerated in subsection (a)(3) to (7)

19 shall apply only:

20   (1) To those persons who shall have registered with the

21   department of taxation by filing a written application

1   for registration in [such] a form as the department

2   shall prescribe, shall have paid the registration fee

3   of $20, and shall have had the exemption allowed by

4   the department or by a court or tribunal of competent

5   jurisdiction upon appeal from any assessment resulting

6   from disallowance of the exemption by the department;

7   (2)   To activities from which no profit inures to the

8   benefit of any private stockholder or individual,

9   except for death or other benefits to the members of

10   fraternal societies; and

11   (3)   To the fraternal, religious, charitable, scientific,

12   educational, communal, or social welfare activities of

13   such persons, or to the activities of hospitals,

14   infirmaries, sanitaria, and potable water companies,

15   as such[, and not to any activity the primary purpose

16   of which is to produce income even though the income

17   is to be used for or in furtherance of the exempt

18   activities of such persons.]; provided that gross

19   income derived from any "unrelated trade or business",

20   as defined in section 513 of the Internal Revenue Code

21   of 1986, as amended, shall not be exempt under this

1   section; provided further that in considering whether

2   an activity is an "unrelated trade or business", the

3   modifications to unrelated business taxable income, as

4   provided in section 512(b)(3) of the Internal Revenue

5   Code of 1986, as amended, shall not apply."

6   SECTION 3. Statutory material to be repealed is bracketed

7   and stricken. New statutory material is underscored.

8   SECTION 4. This Act shall take effect on July 1, 2050;

9   provided that, on December 31, 2028, this Act shall be repealed

10   and section 237-23, Hawaii Revised Statutes, shall be reenacted

11   in the form in which it read on the day before the effective

12   date of this Act.

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. Effective 7/1/2050. Sunsets 12/31/2028. (SD2)

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