

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau
P.O. BOX 259

HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

H.B. No. 1437, H.D. 2, Relating to General Excise Tax Exemptions

BEFORE THE:

Senate Committee on Education

DATE: Wednesday, March 12, 2025

TIME: 3:00 p.m.

LOCATION: State Capitol, Room 229

Chair Kidani, Vice-Chair Kim, and Members of the Committee:

The Department of Taxation (DOTAX) offers the following comments regarding H.B. 1437, H.D. 2, for your consideration.

H.B. 1437, H.D. 2, amends chapter 237, Hawaii Revised Statutes (HRS), to create a general excise tax (GET) exemption for gross proceeds or gross income arising from a sale that benefits a nonprofit school, if the sale is made by a nonprofit school or a nonprofit school-sponsored student activity group.

The nonprofit school must be recognized as a charitable organization organized and operated exclusively for educational purposes and is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (IRC), as amended. The nonprofit school must also be registered with and in possession of a tax clearance certificate from DOTAX and exempt from GET under section 237-23(a)(4).

“Sale that benefits a nonprofit school” is defined as “a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to the nonprofit school or school-sponsored student activity group, are donated to the nonprofit school and are used exclusively to further the nonprofit school’s tax exempt purpose.”

The bill has a defective effective date of January 1, 3000.

DOTAX can administer this measure with an effective date of January 1, 2026.

Thank you for the opportunity to provide comments on this measure.

TAX FOUNDATION OF HAWAII

735 Bishop Street, Suite 417

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE; Exemption for Nonprofit Schools

BILL NUMBER: HB 1437 HD 2

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Establishes a general excise tax exemption on the gross proceeds or gross income received from sales of commodities or services that benefit nonprofit schools.

SYNOPSIS: Adds section 237-___, HRS, to exclude gross income from a sale that benefits a nonprofit school, if the sale is made by either 1) a nonprofit school; or 2) a nonprofit school-sponsored student activity group.

“Nonprofit school” means an organization that is 1) recognized by the IRS as a charitable organization organized and operated exclusively for educational purposes and is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 and 2) registered and in possession of a tax clearance certificate from the Department of Taxation and is exempt under section 237-23(a)(4), HRS.

“Sale that benefits a nonprofit school” means a sale of a commodity or service from which all sale proceeds, less the actual cost to the nonprofit school or school-sponsored student activity group, *are donated* to the nonprofit school and are used exclusively to further the nonprofit school’s tax-exempt purpose.

“Nonprofit school-sponsored student activity group” means a group connected to and under the control of a nonprofit school. Includes student government; athletic, math, and debate teams; band, orchestra, choir, drama, and other performing groups; foreign language clubs, honor societies; pep squads; and other student activity groups that come under the control of the nonprofit school.

EFFECTIVE DATE: January 1, 3000.

STAFF COMMENTS: One of the points of frustration that tax practitioners have when working with nonprofit tax-exempt organizations is the different way that federal and state law define income that is subject to tax even for a nonprofit. The federal code uses the concept of “unrelated business taxable income.” State income tax law conforms to that concept. State GET law uses another concept, however, taxing “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.” Thus, the GET taxes such items as:

- Fundraising dinners
- Golf tournaments
- Sales of fundraising items whether or not donated to the organization

- Benefit concerts or carnivals
- Parking fees at hospitals and medical clinics

The rule that has been in effect for many years is that when a nonprofit sells something for fundraising purposes, the sale is fully taxable the same as if the sale was made by a for-profit entity, even if all net proceeds are donated to the nonprofit.

A legislative effort to change the rule was mounted in 2022 when the legislature passed SB 3021 (2022). However, Governor Ige vetoed the bill, citing the revenue cost and the possibility of unintended consequences. See GM 1405 (2022).

We also question why nonprofit schools should be given treatment unlike that afforded to other nonprofit organizations that are recognized as tax-exempt under HRS section 237-23.

Digested: 3/8/2025



TO: The Honorable Michelle Kidani, Chair
The Honorable Donna Mercado Kim, Vice Chair
Committee on Education

FROM: Philip Bossert, Executive Director
Hawaii Association of Independent Schools

RE: **HB 1437 HD2 – RELATING TO GENERAL EXCISE TAX EXEMPTIONS
In Strong Support**

DATE: Wednesday, March 12, 2025; 3:00 p.m.
Conference room 229 & Videoconference

Aloha Chair Kidani, Vice Chair Kim, and Members of the Committee:

My name is Philip Bossert, and I am the Executive Director of the Hawaii Association of Independent Schools.

The Hawaii Association of Independent Schools (HAIS) strongly supports HB 1437 HD2, which establishes a general excise tax exemption on the gross proceeds or gross income received from the sales of commodities or services that benefit nonprofit schools.

HAIS is a membership organization that currently represents as its members 100 of Hawaii's independent K-12 schools; and, through its subsidiary, the Hawaii Council of Private Schools (HCPS), licenses all 112 private and parochial K-12 schools in the State.

Private schools in Hawaii currently educate approximately 33,000 students and the parents of these students all pay Hawaii GET and income taxes, a portion of which are used to support Hawaii's public and charter schools. Private education institutions receive no state funding for providing these educational services. The state and federal government currently exempt from taxation the tuition, fees and donations paid to private schools. However, income from the fund-raising activities that private schools undertake, in most cases to support scholarships and financial aid for students, is not tax exempt and the schools must pay GET on any proceeds (profit) from such activities. Fundraising activities undertaken by public and charter schools are not subject to GET.

These school fund-raising activities are, for the most part, events that occur once or perhaps twice each year. They are not long-term retail-type activities. Also, for the most part, the persons attending such events are family members of the students who understand that participation in such events is another type of financial support for or donation to the school. As such, I think the income or profit from such activities that private schools undertake to provide support for their institutions should be considered another type of tax-exempt donation to the school as opposed to a taxable business activity just as they are for Hawaii's public schools.

Thank you for the opportunity to submit testimony.



Kauai Christian Academy

4000 Kilauea Road · P.O. Box 1121 · Kilauea, HI 96754
mail@kcaschool.org · Ph 808-828-0047 · Fx 808-828-1850 · www.kcaschool.org

“Academically excellent, Christ-centered education”



March 10, 2025

To whom it may concern:

My name is Daniel Plunkett, and I'm the Head of School at Kauai Christian Academy on Kauai's north shore.

As a non-profit private school, our school is exempt from filing GE taxes on basic program income (i.e., tuition), but we do have to do GE tax filings and pay tax on fundraisers, t-shirt sales, sales of tickets to school plays, rentals of our campus for outside groups, and other ancillary things. For our school that usually amounts to several hundred dollars a month, though it varies widely according to events we may hold. Like most non-profits, we work very hard and all of us who work here are paid little, but we stretch to make ends meet because we believe in the value our school offers to our community.

I believe that the money we (and other similar schools) pay each month can't possibly make that much of a difference in the state's budget, but for us that is a lot of money. Further, the whole category of non-profit entities exists to benefit the community rather than any individual, so this would be an easy way for the state to empower non-profits. Getting taxed on the fundraisers and such we put on to help meet our funding needs is a tough pill to swallow.

According to the Hawaii Association of Independent Schools which licenses non-profit schools, there are 112 non-profit schools in the state representing over 33,000 students. When multiplied by the average amount of money per student that the state spends on children in the public school system, one can see that private schools actually save the state hundreds of millions of dollars per year while also providing educational options to families in Hawaii. I believe it is clearly in the interest of our communities and the state to enable private schools to succeed by keeping the funds they raise for the sake of their mission.

While I understand that the Hawaii state constitution does not allow the state to directly fund private schools, this request would not provide taxpayer funds to non-profit schools, it would merely allow us to keep our own funds from our fundraising and similar revenue. Numerous federal court decisions, including some very recently, have consistently concluded that tax exemptions do not make an institution the recipient of financial aid. For example, the U.S. 4th Circuit Court of Appeals recently ruled in *Buettner-Hartsoe v. Baltimore Lutheran High School Association* that a non-profit high school's tax-exempt status did not constitute federal financial assistance. Looking at legislative history and court precedent, the 4th Circuit found that “Tax exemption is the withholding of a tax burden, rather than the affirmative grant of funds.”

I believe having healthy private school options benefits the state and our communities, and I think approving this bill is an easy way to empower them with little impact on the state's coffers. The money that schools save would, of course, be spent in any number of ways which would benefit the school's operations but also go back into the state's economy.

Again, I respectfully urge you to approve this bill. Thank you for the opportunity to submit testimony.

Daniel Plunkett
Head of School
Kauai Christian Academy

HB-1437-HD-2

Submitted on: 3/10/2025 11:57:32 AM

Testimony for EDU on 3/12/2025 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Renee Dieperink	Individual	Support	Written Testimony Only

Comments:

Groceries and Medical expenses should not be taxed