

ACT 155

H.B. NO. 2595

A Bill for an Act Relating to General Excise Tax.

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

SECTION 1. The general excise tax accounts for over fifty per cent of state revenue realizations. Generally, the general excise tax is an efficient tax assessed on businesses for the privilege of doing business in Hawaii. The efficiency of the general excise tax stems from its broad-based application throughout the economy, coupled with its low rate.

Over time, the general excise tax's efficiency has been diminished due to the routine addition of tax exemptions for particular businesses or industries. A majority of these exemptions allow businesses that are otherwise very profitable to avoid paying the general excise tax altogether. Because some businesses pay no tax, they often do not register to do business in Hawaii or file tax returns. Furthermore, out-of-state businesses that claim exemption from the general excise tax also fail to register, file, or otherwise expressly declare the exemption. This lack of data on businesses operating in Hawaii greatly undermines the department of taxation's ability to gather information on businesses claiming tax benefits. Requiring businesses to be "on the radar" of the department of taxation

will greatly assist in tax administration by providing valuable information that the State may use in compliance efforts.

Disallowing any general excise tax benefits unless basic information is filed is rational and justifiable, especially when tax benefits are a matter of legislative grace. In a time when tax incentives are reviewed with scrutiny by policymakers and administrators, it is important to ensure that businesses do not avoid government tax-benefit oversight by assuming that filing is unnecessary when no tax is due as a result of tax benefits. Even when no tax is due, officials should have all necessary data and information about persons conducting business in Hawaii to test the effectiveness of the tax system and accurately account for those that enjoy exemptions from it.

Additionally, though the general excise tax is a tax on businesses, Hawaii businesses are allowed by law to pass on their general excise tax costs to customers as a cost recovery. However, as the economy has declined, more businesses have failed to pay their general excise tax, even though the tax is still visibly passed on to Hawaii consumers under the guise that it would be paid to the government. Businesses that do not timely remit the tax recovery amount are known to use these funds to pay operating expenses, and some disreputable businesses pocket these funds with no intention of paying their taxes. In short, the practice of increasing consumer costs under the pretext of tax recovery now becomes a consumer-protection matter, and businesses should be liable for paying those tax recovery amounts owed to the State. Especially since more businesses are keeping these tax recovery amounts to cover costs during this economic downturn, the government inevitably becomes the last creditor to be paid.

To restore efficiency in Hawaii's general excise tax, without increasing the tax rate, repealing exemptions, or placing additional burdens on businesses other than what is fair and reasonable, this Act strengthens the general excise tax by requiring all businesses that enjoy excise tax exemptions to register to do business in Hawaii, timely file their tax returns, as well as expressly claim their entitlement. These requirements ensure that the proper information is conveyed to the State to monitor a tax exemption's cost and effectiveness. Additionally, this Act creates a personal trust liability for businesses that use the general excise tax as the basis for increasing their prices and ensures that those funds are paid to the State for the benefit of consumers and businesses.

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§237- General excise tax benefits; denial of tax benefits for failure to properly claim. (a) Notwithstanding any other law to the contrary, a person shall not be entitled to any general excise tax benefit under this chapter unless the person claiming the general excise tax benefit:

- (1) Obtains a license to engage in and conduct business as required under section 237-9; and
 - (2) Files the annual general excise tax reconciliation tax return as provided under this chapter or chapter 231 not later than twelve months from the due date prescribed for the return.
- (b) The director may require any taxpayer to furnish information to determine the validity of any general excise tax benefit and may adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this section.
- (c) The director may waive the denial of the general excise tax benefit under subsection (a) if the failure to comply is due to reasonable cause and not to the wilful neglect of the taxpayer.

(d) For purposes of this section, “general excise tax benefit” means any tax exemption, exclusion of a taxable amount, a reduction from the measure of a tax imposed, a tax deduction, a tax credit, a lower rate of tax, a segregation or division of taxable amounts between multiple taxpayers involved in the same transaction, or any income splitting allowed under this chapter.

§237- Certain amounts held in trust; liability of key individuals. (a) There shall be personal liability for the taxes imposed under this chapter as provided in this section for the following amounts of gross income or gross proceeds:

- (1) Any amount collected as a recovery of the taxpayer’s liability under this chapter, where the amount is passed on as the tax owed by the taxpayer under this chapter for the transaction and is separately stated or accounted for in a receipt, contract, invoice, billing, or other evidence of the business activity; or
- (2) An amount equal to the tax liability under this chapter on a transaction where a taxpayer does not separately state or account for the amount as a tax recovery as provided in paragraph (1). For purposes of this paragraph, the amount of the imputed tax liability is the result of multiplying the gross income or gross proceeds received in the transaction by the tax rate.

The amounts under paragraphs (1) and (2) shall be held in trust for the benefit of the State and for payment to the State in the manner and at the time required by this chapter.

(b) The personal liability under this section applies to any officer, member, manager, or other person having control or supervision over amounts of gross proceeds or gross income collected to pay the general excise tax and held in trust under subsection (a), or who is charged with the responsibility for the filing of returns or the payment of general excise tax on gross income or gross proceeds collected and held in trust under subsection (a). The person shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person wilfully fails to pay or to cause to be paid any taxes due from the taxpayer pursuant to this chapter.

For purposes of this subsection, “wilfully fails to pay or to cause to be paid” shall be construed in accordance with judicial interpretations given to similar provisions of the Internal Revenue Code; consistent therewith, the term “wilfully” shall mean a voluntary, intentional violation of a known legal duty.

(c) An officer, member, manager, or other responsible person shall be liable only for general excise taxes on gross income or gross proceeds collected, plus interest and penalties on those taxes, that became due during the period the person had control, supervision, responsibility, or a duty to act for the taxpayer as described in subsection (b) of this section.

(d) Persons liable under subsection (b) are exempt from liability when nonpayment of the general excise tax on gross income or gross proceeds held in trust is for good cause as determined by the director.

(e) The voluntary or involuntary dissolution of the taxpayer or the withdrawal or surrender of its right to engage in business in this state shall not discharge the liability hereby imposed.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2010, and shall apply to gross income or gross proceeds received by applicable taxpayers on or after its effective date.

(Approved June 1, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.