

A Bill for an Act Relating to Taxation.

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

SECTION 1. Section 237-9.3, Hawaii Revised Statutes, is amended to read as follows:

**“~~§237-9.3~~ 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) The director shall first give written notice to a nonprofit organization to comply with the requirements of this section before imposing a denial of any general excise tax benefit under this chapter, and the organization shall have ninety days from the date of the receipt of the notice to comply with the requirements.

~~(d)~~ (e) For purposes of this section[, “general”]:

“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.

“Nonprofit organization” means a corporate entity, association, or other duly chartered entity that is registered with the State and has received a written determination from the Internal Revenue Service that it is exempt under section 501(c)(3), section 501(c)(4), section 501(c)(8), or so much of section 501(c)(2) as applied to title holding entities that turn over their income to organizations that are exempt under section 501(c)(3), section 501(c)(4), or section 501(c)(8) of the Internal Revenue Code.”

SECTION 2. Section 237-41.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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.

This subsection shall not apply to any officer, 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) for a nonprofit organization.

For purposes of this subsection[, “wilfully”]:

“Nonprofit organization” means a corporate entity, association, or other duly chartered entity that is registered with the State and has received a written determination from the Internal Revenue Service that it is exempt under section 501(c)(3), section 501(c)(4), section 501(c)(8), or so much of section 501(c)(2) as applied to title holding entities that turn over their income to organizations that are exempt under section 501(c)(3), section 501(c)(4), or section 501(c)(8) of the Internal Revenue Code.

“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.”

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 Statutory material to be repealed is bracketed and stricken.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

SECTION 5. This Act shall take effect on July 1, 2012.

(Approved July 5, 2012.)