CHAPTER 237
GENERAL EXCISE TAX LAW

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This is an unofficial compilation of the Hawaii Revised Statutes as of December 31, 2025.

Cross Reference

Tax collection; mainland contractors working on federal construction projects, see §231-9.3.

Tax Information Release No. 89-6, "General Excise Tax on the Fund-Raising Activities of Public School Sponsored Groups"
Tax Information Release No. 89-10, "Taxability of Gross Receipts Derived by Helicopter Tour Operators"

Law Journals and Reviews

Taxes in Hawaii since July 1, 1968: A Report on the Unreported Decisions of Judge Dick Yin Wong, Arthur B. Reinwald, 9 HBJ, no. 4, at 95 (1973).

Taxes in Hawaii 1983-1988: A Funny Thing Happened at the Forum. 22 HBJ, no. 1, at 53 (1989).

Hawaii's General Excise Tax Law: A Comprehensive Review of the Decisions. II HBJ no. 13, at 1 (1998).

Case Notes

Where plaintiff was a "retailer" licensed under this chapter, used the goods in Hawaii after it purchased and imported them from the mainland "for purposes of resale", it was liable for the use tax under this section. 128 H. 116, 284 P.3d 209 (2012).

Value of management and administrative services taxpayer provided to its wholly owned subsidiaries was taxable under this chapter. 6 H. App. 260, 718 P.2d 1122 (1986).

DEFINITIONS; ADMINISTRATION

18-237-1 **§237-1 Definitions.** When used in this chapter, unless otherwise required by the context, the definitions contained in this section and in sections 237-2 to 237-7 shall govern.

"Casual sale" means an occasional or isolated sale or transaction involving:

(1) Tangible personal property by a person who is not required to be licensed under this chapter, or

(2) Tangible personal property which is not ordinarily sold in the business of a person who is regularly engaged in business.

"Comptroller" means the comptroller of the State.

"Legal service plan" or "plan" means a plan in which the cost of the services are paid by a member or by some other person or organization in the member's behalf. A legal service plan is a plan by which legal services are rendered to members identifiable in terms of some common interest. A plan shall provide:

(1) That individual members shall be afforded freedom of choice in the selection of their own attorney or attorneys to provide legal services under the plan; and

(2) For the payment of equal amounts for the cost of services rendered without regard to the identity of the attorney or attorneys selected by the plan member or members. No plan shall otherwise discriminate on the basis of the selection.

"Loan-out company" means a wholly-owned entity formed on behalf of a person that serves as a separate entity that constitutes the person's means of entering a contract with a third party for the purpose of providing services to the third party.

"Marketplace facilitator" means any person who sells or assists in the sale of tangible personal property, intangible property, or services on behalf of another seller by:

(1) Providing a forum, whether physical or electronic, in which sellers list or advertise tangible personal property, intangible property, or services for sale; and

(2) Collecting payment from the purchaser, either directly or indirectly through an agreement with a third party.

"Overhead" means continuous or general costs occurring in the normal course of a business, including but not limited to costs for labor, rent, taxes, royalties, interest, discounts paid, insurance, lighting, heating, cooling, accounting, legal fees, equipment and facilities, telephone systems, depreciation, and amortization.

"Penalty" or "penalties", when used in connection with the additions to the tax imposed for delinquency in payment, includes interest as well.

"Person" or "company" includes every individual, partnership, society, unincorporated association, joint adventure, group, hui, joint stock company, corporation, trustee, personal representative, trust estate, decedent's estate, trust, trustee in bankruptcy, or other entity, whether such persons are doing business for themselves or in a fiduciary capacity, and whether the individuals are residents or nonresidents of the State, and whether the corporation or other association is created or organized under the laws of the State or of another jurisdiction. Any person who has in the person's possession, for sale in the State, the property of a nonresident owner, other than as an employee of such owner, shall be deemed the seller of the property, when sold.

"Purchasing agent" means any person who, as an agent and not a seller, for a consideration, is engaged in the State in the business of purchasing for the purchasing agent's principal or principals from an unlicensed seller or sellers property for use by such principals in the State, for example, by forwarding orders for such purchases, in behalf of such principals, it being immaterial whether the purchasing agent is compensated for the purchasing agent's services by the seller or by the purchaser; but the term "purchasing agent" does not include an employee of the purchaser.

"Representative" means any salesperson, commission agent, manufacturer's representative, broker or other person who is authorized or employed by a seller to assist the seller in selling property for use in the State, by procuring orders for the sales or otherwise, and who carries on those activities in the State, it being immaterial whether the activities are regular or intermittent. The term "representative" shall not include:

(1) A manufacturer's representative whose functions are wholly promotional and to act as liaison between an unlicensed seller and a seller or sellers, and that do not include the procuring, soliciting or accepting of orders for property or the making of deliveries of property, or the collecting of payment for deliveries of property, or the keeping of books of account concerning property orders, deliveries or collections transpiring between an unlicensed seller and a seller or sellers; and

(2) A marketplace facilitator.

"Retailing" or "sales at retail" includes the sale of tangible personal property for consumption or use by the purchaser and not for resale, the renting of tangible personal property, and the rendering of services by one engaged in a service business or calling, as defined in section 237-7, to a person who is not purchasing the services for resale. Persons described in this definition are "retailers".

"Sale" or "sales" includes the exchange of properties as well as the sale thereof for money.

"Taxpayer" means any person liable for any tax hereunder.

"Tax year" or "taxable year" means either the calendar year or the taxpayer's fiscal year when the same constitutes the tax period instead of the calendar year pursuant to section 237-11. [L 1935, c 141, pt of §1; am L 1941, c 265, §1(c); RL 1945, §§5441, 5442; am L 1947, c 113, §6; RL 1955, §117-1; am L 1957, c 34, §3 and c 152, §1; HRS §237-1; am L 1969, c 46, §1 and c 137, §2; am L 1976, c 156, §9 and c 200, pt of §1; am imp L 1984, c 90, §1; gen ch 1985; am L 1991, c 23, §1; gen ch 1993; am L 1999, c 71, §3; am L 2003, c 135, §1; am L 2012, c 34, §20; am L 2017, c 12, §48; am L 2019, c 2, §2; am L 2022, c 217, §2]

Cross Reference

Tax Information Release No. 91-9, "General Excise Tax on the Gross Income of a Trustee in Bankruptcy"

Tax Information Release No. 93-7, "Taxability of Revocable Living Trusts Under the Hawaii General Excise Tax Law, Transient Accommodations Tax Law, and Rental Motor Vehicle and Tour Vehicle Surcharge Tax Law"

Tax Information Release No. 94-1, "Taxation of Interest Income Earned by Trusts Under the Hawaii General Excise Tax Law"

Tax Information Release No. 98-2, "Application of the General Excise and Use Taxes to Certain Leasing Transaction"

Tax Information Release No. 2001-1, "The Application of Certain Hawaii Taxes to Qualified Subchapter S Subsidiary Corporations, Qualified Subchapter S Trusts, and Electing Small Business Trusts"

Tax Information Release No. 2019-3, "Guidance Regarding Marketplace Facilitators, Act 2, Session Laws of Hawaii 2019" Supplemented by TIR 2025-01

Tax Information Release No. 2020-02 (REVISED), "Hawaii Tax Treatment of Various Federal COVID-19 Relief Programs and Payments"

Tax Information Release No. 2025-01, "General Excise Tax Obligations of Transportation Network Companies and Drivers

Attorney General Opinions

Tax credits of one partner can be applied against gross income tax due and owing by the partnership. Att. Gen. Op. 64-5.

Law Journals and Reviews

Rule of Strict Construction in Tax Cases, a Question of Classification or Exemption. 11 HBJ, no. 4, at 98 (1975).

Case Notes

Corporate administrator doing business for estate is a "person" subject to excise tax. 34 H. 493 (1938).

L 1935, c 141, original legislation, held constitutional as applied to sales to PX's and ships stores. 37 H. 314 (1946), aff'd 174 F.2d 21 (1949). See also 38 H. 188, 204 (1948).

Gross income earned by trustee in bankruptcy is taxable under chapter. 52 H. 56, 469 P.2d 814 (1970).

Nondomiciliary trustee holding property for another found liable for tax. 57 H. 436, 559 P.2d 264 (1977).

Taxability of transactions between joint venture and its member. 59 H. 307, 582 P.2d 703 (1978).

"Person" includes partnerships and joint ventures. 61 H. 572, 608 P.2d 383 (1980).

Measurement of gasoline and terminating charge upon delivery were "sale". 65 H. 283, 651 P.2d 469 (1982).

Cited: 33 H. 766, 771 (1936).

§237-2 "Business", "engaging" in business, defined. As used in this chapter:

"Business" includes all activities (personal, professional, or corporate) engaged in or caused to be engaged in with the object of gain or economic benefit either direct or indirect, but does not include casual sales.

"Engaging", with reference to engaging or continuing in business, includes the exercise of corporate or franchise powers. [L 1935, c 141, pt of §1; RL 1945, §5443; RL 1955, §117-2; HRS §237-2; am L 2017, c 12, §49]

Cross Reference

Tax Information Release No. 42-74, "Application of the General Excise Tax to Interest Income"

Tax Information Release No. 91-9, "General Excise Tax on the Gross Income of a Trustee in Bankruptcy"

Tax Information Release No. 92-7, "Application of State Taxes on Inventory and Business Interruption Insurance Proceeds"

Tax Information Release No. 2008-01, "Revocation of Outline, Act 70, SLH 1999 and Act 198, SLH 2000, Revocation of Outline, Act 71, SLH 1999 and Act 198, SLH 2000"

Tax Information Release No. 2008-02, "Advanced Notice of Proposed Administrative Rules Relating to the Taxation of the Motion Picture and Television Film Production Industry"

Tax Information Release No. 2020-02 (REVISED), "Hawaii Tax Treatment of Various Federal COVID-19 Relief Programs and Payments"

Tax Information Release No. 2021-01, "General Excise Tax Imposition on the Film Industry"

Tax Information Release No. 2021-07, "Exemption from Taxes in a Foreign Trade Zone"

Attorney General Opinions

Agreement of sale executed by a partnership dealing in land was not a "casual sale". Att. Gen. Op. 62-1.

Co-op apartment corporation operating and managing apartment building is engaged in business and is taxable on its receipts of monthly "maintenance" charges from stockholder-lessees. Att. Gen. Op. 62-47.

Application of excise tax to activities in foreign trade zone. Att. Gen. Op. 64-52.

Case Notes.

"Casual sale" does not exclude unusual sales within taxpayer's business. 40 H. 722 (1955).

Attorney's activities as trustee, executor and corporate director were not so isolated or unconnected as to constitute "casual" transactions. 53 H. 435, 496 P.2d 1 (1972).

Engaging in activity with "object of gain or economic benefit" construed. 53 H. 435, 496 P.2d 1 (1972).

Out-of-state company's continuing leasing of telecast rights performable only in Hawaii is "business" within this section, although agreement consummated outside of Hawaii. 57 H. 175, 554 P.2d 242 (1976).

Nondomiciliary corporation investing capital in Hawaiian land held to be "engaging in business." 57 H. 436, 559 P.2d 264 (1977).

Taxability of transactions between joint venture and its member. 59 H. 307, 582 P.2d 703 (1978).

Where taxpayer gained or economically benefited from subleasing transactions, the director's assessment and imposition of the general excise tax for taxpayer's subleasing activities was proper. 110 H. 25, 129 P.3d 528 (2006).

Taxpayer partnership's provision of medical equipment and ancillary services to its joint venture constituted "business" under this section and was thus made subject to the general excise tax by §237-20. 93 H. 267 (App.), 999 P.2d 865 (2000).

Cited : 48 H. 486, 490, 405 P.2d 382 (1965).

[§237-2.5] Engaging in business in the State. A person is engaging in business in the State, whether or not the person has a physical presence in the State, if in the current or immediately preceding calendar year:

(1) The person's gross income or gross proceeds from the sale of tangible personal property delivered in the State, services used or consumed in the State, or intangible property used in the State is $100,000 or more; or

(2) The person sold tangible personal property delivered in the State, services used or consumed in the State, or intangible property used in the State in two hundred or more separate transactions. [L 2018, c 41, §1]

Note

Section applies to taxable years beginning after December 31, 2017. L 2018, c 41, §3.

18-237-3 **§237-3 "Gross income", "gross proceeds of sale", defined.** (a) "Gross income" means the gross receipts, cash or accrued, of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce, or sales and the value proceeding or accruing from the sale of tangible personal property, or service, or both, and all receipts, actual or accrued as hereinafter provided, by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees, or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor cost, taxes, royalties, interest, or discount paid or any other expenses whatsoever. Every taxpayer shall be presumed to be dealing on a cash basis unless the taxpayer proves to the satisfaction of the department of taxation that the taxpayer is dealing on an accrual basis and the taxpayer's books are so kept, or unless the taxpayer employs or is required to employ the accrual basis for the purposes of the tax imposed by chapter 235 for any taxable year in which event the taxpayer shall report the taxpayer's gross income for the purposes of this chapter on the accrual basis for the same period.

"Gross proceeds of sale" means the value actually proceeding from the sale of tangible personal property without any deduction on account of the cost of property sold or expenses of any kind.

(b) The words "gross income" and "gross proceeds of sales" shall not be construed to include: gross receipts from the sale of securities as defined in 15 United States Code section 78c or similar laws of jurisdictions outside the United States, contracts for the sale of a commodity for future delivery and other agreements, options, and rights as defined in 7 United States Code section 2 that are permitted to be traded on a board of trade designated by the Commodities Futures Trading Commission under the Commodity Exchange Act, or evidence of indebtedness or, except as otherwise provided, from the sale of land in fee simple, improved or unimproved, dividends as defined by chapter 235; cash discounts allowed and taken on sales; the proceeds of sale of goods, wares, or merchandise returned by customers when the sale price is refunded either in cash or by credit; or the sale price of any article accepted as part payment on any new article sold, if the full sale price of the new article is included in the "gross income" or "gross proceeds of sales"; gross receipts from the sale or transfer of materials or supplies, interest on loans, or the provision of engineering, construction, maintenance, or managerial services by one "member" of an "affiliated public service company group" to another "member" of the same group as such terms are defined in section 239-2. Accounts found to be worthless and actually charged off for income tax purposes may be deducted, at corresponding periods, from gross proceeds of sale, or gross income, within this chapter, so far as they reflect taxable sales made, or gross income earned, after July 1, 1935, but shall be added to gross proceeds of sale or gross income when and if afterwards collected.

(c) For purposes of the tax imposed by this chapter, a taxpayer under section 237-13(3) may report on a cash basis; provided the taxpayer notifies the department of taxation of the basis upon which the tax imposed by this chapter is to be reported. [L 1935, c 141, pt of §1; am L 1941, c 265, §1(a); RL 1945, §5444; RL 1955, §117-3; am L Sp 1957,

c 1, §3(a); am L Sp 1959 2d, c 1, §16; HRS §237-3; am L 1977, c 26, §2; am imp L 1984, c 90, §1; gen ch 1985; am L 1988, c 295, §2; am L 1989, c 118, §1; am L 1997, c 178, §3; am L 2000, c 262, §2]

Cross Reference

Tax Information Release No. 42-74, "Application of the General Excise Tax to Interest Income"

Tax Information Release No. 82-5, "Taxability of Rebates on Automobiles Sold Under Manufacturer/Dealer Sales Incentive Programs for General Excise Tax Purposes"

Tax Information Release No. 90-13, "General Excise Tax Imposed Upon a Person Receiving Gross Income from the Rental of Residential Real Property"

Tax Information Release No. 92-5, "Application of the General Excise Tax on the Recovery of Real Property Taxes from Lessees and Sublessees"

Tax Information Release No. 92-7, "Application of State Taxes on Inventory and Business Interruption Insurance Proceeds"

Tax Information Release No. 93-7, "Taxability of Revocable Living Trusts Under the Hawaii General Excise Tax Law, Transient Accommodations Tax Law, and Rental Motor Vehicle and Tour Vehicle Surcharge Tax Law"

Tax Information Release No. 94-1, "Taxation of Interest Income Earned by Trusts Under the Hawaii General Excise Tax Law"

Tax Information Release No. 95-1, "Application of the General Excise Tax on the Gross Receipts from a Covenant Not to Compete"

Tax Information Release No. 2010-05, "Act 155, Session Laws of Hawaii 2010, Relating to General Excise Tax; The General Excise Tax Protection Act"

Tax Information Release No. 2020-02 (REVISED), "Hawaii Tax Treatment of Various Federal COVID-19 Relief Programs and Payments"

Tax Information Release No. 2024-03, "Application of General Excise Tax to Discounted Sales Receipts"

Attorney General Opinions

With the exception of pre-bid costs, all items entering into the total contract price of a Capehart project contractor constitute gross income subject to general excise taxation. Att. Gen. Op. 61-85.

Interest income from agreement of sale not exempt as income from "sale of land". Att. Gen. Op. 62-1.

Taxability of out-of-state travel agency conducting local tours and of local travel agent conducting out-of-state tours. Att. Gen. Op. 65-6.

Case Notes

"Gross income", defined. 34 H. 269 (1937).

Exemption from gross income, "sale of real property". 44 H. 584, 358 P.2d 539 (1961).

Sale defined. 44 H. 584, 358 P.2d 539 (1961).

Payments by manufacturers and other sellers to retailers under cooperative merchandising or advertising agreements are payments for services and constitute gross income. 51 H. 281, 458 P.2d 664 (1969).

Interest received on agreement of sale of land does not come within "gross receipts from the sale of land in fee simple". 52 H. 279, 474 P.2d 538 (1970).

Interest income received by a nondomiciliary vendor from sales of Hawaiian land found not within exemptions. 57 H. 436, 559 P.2d 264 (1977).

Taxability of transactions between joint venture and its member. 59 H. 307, 582 P.2d 703 (1978).

Cited: 40 H. 722, 728 (1955), 56 H. 321, 536 P.2d 91 (1975).

18-237-4 **§237-4 "Wholesaler", "jobber", defined.** (a) "Wholesaler" or "jobber" applies only to a person making sales at wholesale. Only the following are sales at wholesale:

(1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;

(2) Sales to a licensed manufacturer of materials or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and that will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;

(3) Sales to a licensed producer or cooperative association of materials or commodities that are to be incorporated by the producer or by the cooperative association into a finished or saleable product that is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities that are sold by the producer or by the cooperative association;

(4) Sales to a licensed contractor, of materials or commodities that are to be incorporated by the contractor into the finished work or project required by the contract and that will remain in such finished work or project in such form as to be perceptible to the senses;

(5) Sales to a licensed producer, or to a cooperative association described in section [237-23(a)(8)] for sale to a licensed producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or for incorporation into a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer's own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator's service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section [237-23(a)(8)] of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;

(6) Sales to a licensed producer, or to a cooperative association described in section [237-23(a)(8)] for sale to the producer, of seed or seedstock for producing agricultural and aquacultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural and aquacultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);

(7) Sales to a licensed producer, or to a cooperative association described in section [237-23(a)(8)] for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural and aquacultural products; of seedlings and cuttings for producing nursery plants or aquacultural products; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);

(8) Sales of tangible personal property where:

(A) Tangible personal property is sold upon the order or request of a licensed seller for the purpose of rendering a service in the course of the person's service business or calling, or upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;

(B) The tangible personal property becomes or is used as an identifiable element of the service rendered; and

(C) The cost of the tangible personal property does not constitute overhead to the licensed seller;

(9) Sales to a licensed leasing company of capital goods that have a depreciable life, are purchased by the leasing company for lease to its customers, and are thereafter leased as a service to others;

(10) Sales of services to a licensed seller engaging in a business or calling whenever:

(A) Either:

(i) In the context of a service-to-service transaction, a service is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling, including a dealer's furnishing of goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property;

(ii) In the context of a service-to-tangible personal property transaction, a service is rendered upon the order or request of a licensed seller for the purpose of manufacturing, producing, or preparing tangible personal property to be sold;

(iii) In the context of a services-to-contracting transaction, a service is rendered upon the order or request of a licensed contractor as defined in section 237-6 for the purpose of assisting that licensed contractor; or

(iv) In the context of a services-to-transient accommodations rental transaction, a service is rendered upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;

(B) The benefit of the service passes to the customer of the licensed seller, licensed contractor, or person furnishing transient accommodations as an identifiable element of the other service or property to be sold, the contracting, or the furnishing of transient accommodations;

(C) The cost of the service does not constitute overhead to the licensed seller, licensed contractor, or person furnishing transient accommodations;

(D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, contractor, or person furnishing transient accommodations for imposition of the tax under this chapter;

(E) The gross income of the licensed seller is not subject to a deduction under this chapter or chapter 237D; and

(F) The resale of the service, tangible personal property, contracting, or transient accommodations is subject to the tax imposed under this chapter at the highest tax rate.

(11) Sales to a licensed retail merchant, jobber, or other licensed seller of bulk condiments or prepackaged single-serving packets of condiments that are provided to customers by the licensed retail merchant, jobber, or other licensed seller;

(12) Sales to a licensed retail merchant, jobber, or other licensed seller of tangible personal property that will be incorporated or processed by the licensed retail merchant, jobber, or other licensed seller into a finished or saleable product during the course of its preparation for market (including disposable, nonreturnable containers, packages, or wrappers, in which the product is contained and that are generally known and most commonly used to contain food or beverage for transfer or delivery), and which finished or saleable product is to be sold and not otherwise used by the licensed retail merchant, jobber, or other licensed seller;

(13) Sales of amusements subject to taxation under section 237-13(4) to a licensed seller engaging in a business or calling whenever:

(A) Either:

(i) In the context of an amusement-to-service transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;

(ii) In the context of an amusement-to-tangible personal property transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of selling tangible personal property; or

(iii) In the context of an amusement-to-amusement transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another amusement in the course of the person's amusement business;

(B) The benefit of the amusement passes to the customer of the licensed seller as an identifiable element of the other service, tangible personal property to be sold, or amusement;

(C) The cost of the amusement does not constitute overhead to the licensed seller;

(D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, person furnishing transient accommodations, or person rendering an amusement for imposition of the tax under chapter 237;

(E) The gross income of the licensed seller is not subject to a deduction under this chapter; and

(F) The resale of the service, tangible personal property, or amusement is subject to the tax imposed under this chapter at the highest rate.

As used in this paragraph, "amusement" means entertainment provided as part of a show for which there is an admission charge; and

(14) Sales by a printer to a publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials.

(b) If the use tax law is finally held by a court of competent jurisdiction to be unconstitutional or invalid insofar as it purports to tax the use or consumption of tangible personal property imported into the State in interstate or foreign commerce or both, wholesalers and jobbers shall be taxed thereafter under this chapter in accordance with the following definition (which shall supersede the preceding paragraph otherwise defining "wholesaler" or "jobber"): "Wholesaler" or "jobber" means a person, or a definitely organized division thereof, definitely organized to render and rendering a general distribution service that buys and maintains at the person's place of business a stock or lines of merchandise that the person distributes; and that the person, through salespersons, advertising, or sales promotion devices, sells to licensed retailers, to institutional or licensed commercial or industrial users, in wholesale quantities and at wholesale rates. A corporation deemed not to be carrying on a trade or business in this State under section 235-6 shall nevertheless be deemed to be a wholesaler and shall be subject to the tax imposed by this chapter. [L 1935, c 141, pt of §1; RL 1945, §5446; RL 1955, §117-5; am L 1957, c 34, §11(a); am L 1959, c 257, §§1, 2; am L 1963, c 70, §2; am imp L 1965, c 155, §2; am L 1966, c 28, §2; am L 1967, c 155, §1; HRS §237-4; am L 1970, c 180, §9; am L 1971, c 204, §2; am L 1979, c 105, §22; am L 1982, c 189, §1 and c 253, §2; am L 1984, c 73, §2; am L 1990, c 286, §2; am L 1991, c 286, §2; am L 1992, c 106, §5; gen ch 1992; am L 1999, c 71, §4 and c 173, §1; am L 2000, c 198, §1 and c 271, §1; am L 2001, c 164, §2; am L 2008, c 16, §5 and c 89, §1; am L 2015, c 22, §2]

Cross Reference

Tax Information Release No. 52-77, "Guidelines Relating to Sales of Tangible Personal Property to Licensed Leasing Companies, Forms to be Used"

Tax Information Release No. 95-5, "Application of the General Excise ('GE') and Use Taxes on Sales of Tangible Personal Property ('TPP') by an Out-of-State Seller, Including Drop Shipments"

Tax Information Release No. 96-4, "The General Excise Tax Rates Levied on Sales of Pesticides to Pest Control Operators"

Tax Information Release No. 98-2, "Application of the General Excise and Use Taxes to Certain Leasing Transactions"

Tax Information Release No. 98-8, "Application of Act 247, Session Laws of Hawaii 1998 (Act 247), Relating to the General Excise Tax Exemption for Tangible Personal Property Imported Into the State for Resale at Wholesale"

Tax Information Release No. 2008-01, "Revocation of Outline, Act 70, SLH 1999 and Act 198, SLH 2000, Revocation of Outline, Act 71, SLH 1999 and Act 198, SLH 2000"

Tax Information Release No. 2021-06, "General Excise Tax Treatment of Software"

Case Notes

Licensed means licensed under this chapter. 37 H. 314 (1946), aff'd 174 F.2d 21 (1949); 41 H. 615 (1957).

PX and ships stores are not "licensed merchants", or "wholesalers". 37 H. 314 (1946), aff'd 174 F.2d 21 (1949).

Sales of automobiles to leasing companies were at retail rather than wholesale, where agreements between leasing company and its customers were actually leases and not conditional sales. 53 H. 195, 490 P.2d 902 (1971).

Sales of appliance parts to licensed repairpersons who bill their customers for labor and materials are wholesale sales. 53 H. 450, 497 P.2d 37 (1972).

Par. (8): Car rental contract is a "lease". "Depreciable life" and "capital goods" construed. 56 H. 644, 547 P.2d 1343 (1976).

"Wholesaler" v. "Service business or calling" construed. 63 H. 579, 633 P.2d 535 (1981).

Cited: 45 H. 167, 182, 363 P.2d 990 (1961).

[§237-4.5] Marketplace facilitators. (a) A marketplace facilitator shall be deemed the seller of tangible personal property, intangible property, or services and the seller on whose behalf the sale is made shall be deemed to be making a sale at wholesale pursuant to section 237-4.

(b) For purposes of section 237-3, a marketplace facilitator's gross income or gross proceeds of sale include receipts from sales on behalf of other sellers under subsection (a).

(c) Any person other than a marketplace facilitator who provides a forum, whether physical or electronic, in which sellers list or advertise tangible personal property, intangible property, or services for sale and takes or processes sales orders shall:

(1) Post a conspicuous notice on its forum that informs purchasers intending to purchase tangible personal property, intangible property, or services for delivery to or use at a location in this State that the purchaser is required to pay use tax if the sale is made from an unlicensed seller;

(2) Provide a written notice to each purchaser at the time of each sale of tangible personal property, intangible property, or services for delivery to or use at a location in this State that the purchaser may be required to remit use tax directly to the department and provide instructions for obtaining additional information from the department on whether and how to remit use tax to the department; and

(3) No later than the twentieth day of the fourth month following the close of the taxable year, submit a report to the department that includes, with respect to each purchaser of tangible personal property, intangible property, or services delivered to or used at a location in this State, all of the following:

(A) The purchaser's name, billing address, and mailing address;

(B) If the sale involved the purchase of tangible personal property, the address in this State to which the tangible personal property was delivered to the purchaser;

(C) The aggregate dollar amount of the purchaser's purchases from the seller; and

(D) The name and address of the seller that made the sale to the purchaser;

provided that the person, in lieu of complying with the notice and reporting requirements in this subsection, may elect to be deemed the seller of tangible personal property, intangible property, or services as provided in subsection (a).

(d) Any person who fails to comply with subsection (c) and has not elected to be deemed the seller of tangible personal property, intangible property, or services unless it is shown that the failure is due to reasonable cause and not due to neglect, shall be assessed a penalty of $1,000 if the failure is for not more than one month, with an additional $1,000 for each additional month or fraction thereof during which the failure continues, not exceeding $12,000 in the aggregate. [L 2019, c 2, §1]

Cross Reference

Tax Information Release No. 2019-3, "Guidance Regarding Marketplace Facilitators, Act 2, Session Laws of Hawaii 2019" Supplemented by TIR 2025-01

Tax Information Release No. 2021-06, "General Excise Tax Treatment of Software"

Tax Information Release No. 2025-01, "General Excise Tax Obligations of Transportation Network Companies and Drivers

§237-5 "Producer" defined. "Producer" means any person engaged in the business of raising and producing agricultural products in their natural state, or in producing natural resource products, or engaged in the business of fishing or aquaculture, for sale, or for shipment or transportation out of the State, of the agricultural or aquaculture products in their natural or processed state, or butchered and dressed, or the natural resource products, or fish.

As used in this section "agricultural products" include floricultural, horticultural, viticultural, forestry, nut, coffee, dairy, livestock, poultry, bee, animal, and any other farm, agronomic, or plantation products. [L 1935, c 141, pt of §1; RL 1945, §5447; RL 1955, §117-6; am L 1957, c 34, §11(b); HRS §237-5; am L 1982, c 253, §1; am L 1984, c 73, §3]

Cross Reference

Tax Information Release No. 98-5, "General Excise Tax Exemption for Tangible Personal Property, Including Souvenirs and Gift Items, Shipped Out of the State"

Case Notes

Cited: 41 H. 615, 619 (1957).

§237-6 "Contractor", "contracting", "federal cost-plus contractor", defined. "Contracting" means the business activities of a contractor.

"Contractor" includes, for purposes of this chapter:

(1) Every person engaging in the business of contracting to erect, construct, repair, or improve buildings or structures, of any kind or description, including any portion thereof, or to make any installation therein, or to make, construct, repair, or improve any highway, road, street, sidewalk, ditch, excavation, fill, bridge, shaft, well, culvert, sewer, water system, drainage system, dredging or harbor improvement project, electric or steam rail, lighting or power system, transmission line, tower, dock, wharf, or other improvements;

(2) Every person engaging in the practice of architecture, professional engineering, land surveying, and landscape architecture, as defined in section 464-1; and

(3) Every person engaged in the practice of pest control or fumigation as a pest control operator as defined in section 460J-1.

"Federal cost-plus contractor" means a contractor having a contract with the United States or an instrumentality thereof, excluding national banks, where, by the terms of the contract, the United States or such instrumentality, excluding national banks, agrees to reimburse the contractor for the cost of material, plant, or equipment used in the performance of the contract and for taxes which the contractor may be required to pay with respect to such material, plant, or equipment, whether the contractor's profit is computed in the form of a fixed fee or on a percentage basis; and also means a subcontractor under such a contract, who also operates on a cost-plus basis. [L 1935, c 141, pt of §1; am L 1941, c 265, §1(b); am L 1943, c 81, §1(a); RL 1945, §5448; RL 1955, §117-7; am L 1965, c 201, §36; HRS §237-6; am L 1971, c 4, §1 and c 204, §3; am L 1984, c 60, §1; am L 2000, c 198, §2]

Cross Reference

Tax Information Release No. 84-2, "Subcontract Deductions Claimed by General Contractors for Payment Made to Pest Control Operators Under the General Excise Tax Law, Chapter 237, HRS"

Tax Information Release No. 2008-01, "Revocation of Outline, Act 70, SLH 1999 and Act 198, SLH 2000, Revocation of Outline, Act 71, SLH 1999 and Act 198, SLH 2000"

Case Notes

"Structures" does not include boats and vessels, and taxpayers engaged in repair of marine vessels is not a "contractor". 55 H. 572, 524 P.2d 890 (1974).

Cited: 44 H. 584, 587, 358 P.2d 539 (1961).

§237-7 "Service business or calling", defined. "Service business or calling" includes all activities engaged in for other persons for a consideration which involve the rendering of a service, including professional and transportation services, as distinguished from the sale of tangible property or the production and sale of tangible property. "Service business or calling" does not include the services rendered by an employee to the employee's employer. [L 1935, c 141, pt of §1; RL 1945, §5449; am L 1951, c 165, §1; RL 1955, §117-8; HRS §237-7; am L 1983, c 206, §3; am imp L 1984, c 90, §1; gen ch 1985; am L 1999, c 71, §5; am L Sp 2001 3d, c 9, §2]

Cross Reference

Tax Information Release No. 2008-01, "Revocation of Outline, Act 70, SLH 1999 and Act 198, SLH 2000, Revocation of Outline, Act 71, SLH 1999 and Act 198, SLH 2000"

Case Notes

Services rendered by retailers in promoting sales of commodities for which they received payment from the manufacturers and sellers of the commodities constituted non-professional activities within meaning of section. 51 H. 281, 458 P.2d 664 (1969).

Taxpayer may be subject to both the service business and retailing classifications to extent each is applicable to particular items of gross income. 53 H. 450, 497 P.2d 37 (1972).

§237-8 Administration and enforcement by department. The administration of this chapter is vested in and shall be exercised by the department of taxation, which shall prescribe forms and reasonable rules of procedure in conformity with this chapter for the making of returns and for the ascertainment, assessment, and collection of the taxes imposed hereunder. Such forms and rules, when prescribed by the department and printed and published in the manner provided by law shall have the force and effect of law. The enforcement of this chapter in any of the courts of the State is under the exclusive jurisdiction of the department, which shall require the assistance of the attorney general of the State, the respective county attorneys and the prosecuting attorney of the counties where suit is brought; but these attorneys shall receive no fees or compensation for services rendered in enforcing this chapter in addition to the respective salaries paid by law to them.

The department shall have, in addition to all of the duties and powers herein prescribed or granted, all the duties and powers prescribed or granted by the existing or future tax laws of the State so far as the same may be applicable to the administration of this chapter and are not contrary to the express provisions hereof. [L 1935, c 141, §20; RL 1945, §5450; RL 1955, §117-9; am L Sp 1959 2d, c 1, §16; HRS §237-8]

Case Notes

Section makes applicable to this chapter all the provisions of the state tax laws. 44 H. 584, 595, 358 P.2d 539 (1961).

Economy in administration is a proper factor for consideration in assessment of taxes. 56 H. 321, 536 P.2d 91 (1975).

Construe excise tax law in relation to income tax law. 56 H. 644, 547 P.2d 1343 (1976).

§237-8.5 REPEALED. L 2003, c 135, §10.

18-237-8.6-01 to 18-237-8.6-10

§237-8.6 County surcharge on state tax; administration. *[Section repealed December 31, 2030. L Sp 2017, c 1, §6.]* (a) The county surcharge on state tax, upon the adoption of county ordinances and in accordance with the requirements of section 46-16.8, shall be levied, assessed, and collected as provided in this section on all gross proceeds and gross income taxable under this chapter. No county shall set the surcharge on state tax at a rate greater than one-half per cent of all gross proceeds and gross income taxable under this chapter. All provisions of this chapter shall apply to the county surcharge on state tax. With respect to the surcharge, the director of taxation shall have all the rights and powers provided under this chapter. In addition, the director of taxation shall have the exclusive rights and power to determine the county or counties in which a person is engaged in business and, in the case of a person engaged in business in more than one county, the director shall determine, through apportionment or other means, that portion of the surcharge on state tax attributable to business conducted in each county.

(b) Each county surcharge on state tax that may be adopted, extended, or amended pursuant to section 46-16.8 shall be levied beginning in a taxable year after the adoption of the relevant county ordinance; provided that no surcharge on state tax may be levied:

(1) Before:

(A) January 1, 2007, if the county surcharge on state tax was established by an ordinance adopted before December 31, 2005;

(B) January 1, 2019, if the county surcharge on state tax was established by the adoption of an ordinance after June 30, 2015, but before June 30, 2018;

(C) January 1, 2020, if the county surcharge on state tax was established by the adoption of an ordinance on or after June 30, 2018, but before March 31, 2019;

(D) January 1, 2024, if the county surcharge on state tax was established by the adoption of an ordinance on or after March 31, 2019, but before August 1, 2023; or

(E) January 1, 2025, if the county surcharge on state tax was established by the adoption of an ordinance on or after August 1, 2023, but before December 31, 2023; and

(2) After December 31, 2030.

(c) The county surcharge on state tax, if adopted, shall be imposed on the gross proceeds or gross income of all written contracts that require the passing on of the taxes imposed under this chapter; provided that if the gross proceeds or gross income are received as payments beginning in the taxable year in which the taxes become effective, on contracts entered into before June 30 of the year prior to the taxable year in which the taxes become effective, and the written contracts do not provide for the passing on of increased rates of taxes, the county surcharge on state tax shall not be imposed on the gross proceeds or gross income covered under the written contracts. The county surcharge on state tax shall be imposed on the gross proceeds or gross income from all contracts entered into on or after June 30 of the year prior to the taxable year in which the taxes become effective, regardless of whether the contract allows for the passing on of any tax or any tax increases.

(d) No county surcharge on state tax shall be established on any:

(1) Gross income or gross proceeds taxable under this chapter at the one-half per cent tax rate;

(2) Gross income or gross proceeds taxable under this chapter at the 0.15 per cent tax rate; or

(3) Transactions, amounts, persons, gross income, or gross proceeds exempt from tax under this chapter.

(e) The director of taxation shall revise the general excise tax forms to provide for the clear and separate designation of the imposition and payment of the county surcharge on state tax.

(f) The taxpayer shall designate the taxation district to which the county surcharge on state tax is assigned in accordance with rules adopted by the director of taxation under chapter 91. The taxpayer shall file a schedule with the taxpayer's periodic and annual general excise tax returns summarizing the amount of taxes assigned to each taxation district.

(g) The penalties provided by section 231-39 for failure to file a tax return shall be imposed on the amount of surcharge due on the return being filed for the failure to file the schedule required to accompany the return. In addition, there shall be added to the tax an amount equal to ten per cent of the amount of the surcharge and tax due on the return being filed for the failure to file the schedule or the failure to correctly report the assignment of the general excise tax by taxation district on the schedule required under this subsection.

(h) All taxpayers who file on a fiscal year basis whose fiscal year ends after December 31 of the year prior to the taxable year in which the taxes become effective, shall file a short period annual return for the period preceding January 1 of the taxable year in which the taxes become effective. Each fiscal year taxpayer shall also file a short period annual return for the period starting on January 1 of the taxable year in which the taxes become effective, and

ending before January 1 of the following year. [L 2005, c 247, §3; am L 2015, c 240, §§5, 7, am L Sp 2017, c 1 §3; am L 2018, c 11, §2; am L 2023, c 48, §3]

LICENSES; TAX; EXEMPTIONS

Cross Reference

Tax Information Release No. 2010-05, "Act 155, Session Laws of Hawaii 2010, Relating to General Excise Tax; The General Excise Tax Protection Act"

§237-9 Licenses; penalty. (a) Except as provided in this section, any person who has a gross income or gross proceeds of sales or value of products upon which a privilege tax is imposed by this chapter, as a condition precedent to engaging or continuing in such business, shall in writing apply for and obtain from the department of taxation, upon a one-time payment of the sum of $20, a license to engage in and to conduct such business, upon condition that the person shall pay the taxes accruing to the State under this chapter, and the person shall thereby be duly licensed to engage in and conduct the business. The license shall not be transferable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The license may be inspected and examined, and shall at all times be conspicuously displayed at the place for which it is issued.

(b) Licenses and applications therefor shall be in such form as the department shall prescribe, except that where the licensee is engaged in two or more forms of business of different classification, the license shall so state on its face. The license provided for by this section shall be effective until canceled in writing. Any application for the reissuance of a previously canceled license identification number after December 31, 1989, shall be regarded as a new license application and subject to the payment of the one-time license fee of $20. The director may revoke or cancel any license issued under this chapter for cause as provided by rules adopted pursuant to chapter 91.

(c) Any person who receives gross income or gross proceeds of sales or value of products from engaging in business in the State and who fails to obtain a license or receives gross income or gross proceeds of sales or value of products from engaging in business in the State without a license required under this section may be fined not more than $500; provided that a cash-based business may be fined not less than $500 and not more than $2,000, as determined by the director or the director's designee. The penalty under this subsection shall be in addition to any other penalty provided under law and may be waived or canceled upon a showing of good cause.

(d) If the license fee is paid, the department shall not refuse to issue a license or revoke or cancel a license for the exercise of a privilege protected by the First Amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section 237-46 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.

(e) The director may permit a person engaged in network marketing, multi-level marketing, or other similar business to obtain the license required under this section for purposes of becoming a tax collection agent on behalf of its direct sellers. The tax collection agent shall report, collect, and pay over the taxes due under this chapter and chapter 238 on behalf of its direct sellers who are covered by the tax collection agreement. The tax collection agent's direct sellers shall be deemed to be licensed under this chapter; provided that the licensure shall apply solely to the business activity conducted directly through the marketing arrangement. Under this section, a tax collection agent shall:

(1) Notify all of its direct sellers making sales in the State that it has been designated to collect, report, and pay over the tax imposed by this chapter and chapter 238 on their behalf on the business activity conducted through the marketing arrangement;

(2) If required by the director as a condition of obtaining the license, furnish with the annual return, a list (including identification numbers) of all direct sellers for the taxable year who have been provided (by the tax collection agent) information returns required under section 6041A of the Internal Revenue Code of 1986, as amended, and any other information that is relevant to ensure proper payment of taxes due under this section; and

(3) Be personally liable for the taxes due and collected under the tax collection agreement if taxes are collected, but not reported or paid, together with penalties and interest as provided by law.

(f) For the purposes of this section:

"Cash-based business" has the same meaning as in section 231-93.

"Consumer product" shall include tangible consumer products and intangible consumer services.

"Direct seller" means any person who is engaged in the trade or business of selling (or soliciting the sale of) consumer products:

(1) To any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis, that the director prescribes by rule adopted pursuant to chapter 91, for resale other than in a permanent retail establishment;

(2) Other than in a permanent retail establishment; provided that:

(A) Substantially all the remuneration (whether or not paid in cash) for the sale of consumer products is directly related to sales or other output rather than to the number of hours worked; and

(B) The sales of consumer products by the person are performed pursuant to a written contract that provides that the person will not be treated as an employee with respect to those sales for federal or state tax purposes.

"Direct seller" includes individuals who realize remuneration dependent on the productivity of other individuals in the marketing arrangement.

"Network marketing" or "multi-level marketing" means a marketing arrangement in which consumer products are distributed and sold to or through direct sellers. [L 1935, c 141, §21; RL 1945, §5451; am L 1951, c 165, §2; RL 1955, §117-10; am L 1957, c 34, §11(c); am L Sp 1957, c 1, §3(c); am L Sp 1959 2d, c 1, §16; HRS §237-9; am imp L 1984, c 90, §1; gen ch 1985; am L 1989, c 6, §1; am L 1995, c 92, §12; am L 1998, c 143, §1; am L 2009, c134, §6; am L 2013, c 58, §1]

Cross Reference

Tax Information Release No. 2001-1, "The Application of Certain Hawaii Taxes to Qualified Subchapter S Subsidiary Corporations, Qualified Subchapter S Trusts, and Electing Small Business Trusts"

Tax Information Release No. 2008-02, "Advanced Notice of Proposed Administrative Rules Relating to the Taxation of the Motion Picture and Television Film Production Industry"

Tax Information Release No. 2021-01, "General Excise Tax Imposition on the Film Industry"

Case Notes

Licensed means, licensed under this chapter. 37 H. 314 (1946), aff'd 174 F.2d 21 (1949).

Cited: 216 F.2d 700 (1954); 40 H. 121, 132 (1953); 41 H. 615, 621 (1957).

§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.

(e) 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.

"Nonprofit organization" means a corporate entity, association, or other duly chartered entity that is registered with the State and is exempt from the application of this chapter pursuant to section 237-23(a)(3), (4), (5), (6), or (7). [L 2010, c 155, §2, am L 2012, c 219, §1; am L 2013, c 52, §1]

Cross Reference

Tax Information Release No. 2010-05, "Act 155, Session Laws of Hawaii 2010, Relating to General Excise Tax; The General Excise Tax Protection Act"

Tax Information Release No. 2011-04, " General Excise Tax Reporting Requirements for Nonprofit Organizations"

[§237-9.5] No separate licensing, filing, or liability for certain revocable trusts. In the case of any trust that, for state and federal income tax reporting purposes:

(1) Has no registration or filing requirements separate and apart from its grantor or grantors;

(2) Is subject to the requirement that all items of income, deduction, and credit are to be reported by the individual grantor or grantors; and

(3) Is revocable by the grantor or grantors;

no licensing, registration, or filing requirements under this chapter shall apply; provided that the individual grantor or grantors must be licensed under this chapter and pay the appropriate general excise tax on trust income, if the trust income is from engaging in business. [L 1994, c 12, §2]

Cross Reference

Tax Information Release No. 94-5, "Licensing Requirements for Certain Trusts Under Hawaii's General Excise Tax Law"

Tax Information Release No. 2001-1, "The Application of Certain Hawaii Taxes to Qualified Subchapter S Subsidiary Corporations, Qualified Subchapter S Trusts, and Electing Small Business Trusts"

§237-10 REPEALED. L 1989, c 6, §6.

[§237-10.5] Reporting requirement for contractors on federal construction projects. All persons who do not possess a valid license under this chapter at the time of the contract award and who contract with the federal government for any construction project located in the State shall report to the department, on forms prescribed by the department, its estimated gross receipts or any other information requested by the department on the prescribed form, from the construction project within thirty days of the contract being awarded. Failure to report as provided in this section shall result in a penalty of $1,000 per month, or fraction thereof, for each month that a failure to report exists; provided that the maximum penalty allowed under this section in the aggregate shall not be more than $6,000. [L 2009, c 134, §3; am L 2013, c 58, §1]

§237-11 Tax year. The assessment of taxes herein made and the returns required therefor shall be for the year ending on December 31. If the taxpayer, in exercising a privilege taxable under this chapter, keeps the taxpayer's books reflecting the same on a basis other than the calendar year, the taxpayer may, with the assent of the department of taxation, and upon the direction of the department shall, make the taxpayer's annual returns and pay taxes for the year covering the taxpayer's accounting period as shown by the method of keeping the taxpayer's books. [L 1935, c 141, §10; RL 1945, §5452; RL 1955, §117-12; am L 1957, c 34, §4; am L Sp 1959 2d, c 1, §16; HRS §237-11; am imp L 1984, c 90, §1; gen ch 1985]

§237-12 Tax cumulative; extent of license. (a) The tax imposed by this chapter shall be in addition to the license fee imposed under section 237-9 and all other taxes levied by law as a condition precedent to engaging in any business, trade, or calling. A person exercising a privilege taxable under this chapter, subject to the payment of the license fee imposed under section 237-9, which is a condition precedent to exercising the privilege taxed, may exercise the privilege upon the condition that the person shall pay the tax accruing under this chapter.

(b) In the case of any person entitled to the protection of section 237-9(d), the tax shall be collected only through ordinary means. [L 1935, c 141, §11; RL 1945, §5453; RL 1955, §117-13; am L 1959, c 277, §1; HRS §237-12; am imp L 1984, c 90, §1; gen ch 1985; am L 1989, c 6, §2; am L 2009, c 134, §7; am L 2013, c 58, §1]

§237-13 Imposition of tax. There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

18-237-13-01 (1) Tax on manufacturers.

(A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared, for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.

(B) The measure of the tax on manufacturers is the value of the entire product for sale.

18-237-13-02 (2) Tax on business of selling tangible personal property; producing.

(A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever, there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross proceeds of sales of the business; provided that, in the case of a wholesaler, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business; and provided further that insofar as the sale of tangible personal property is a wholesale sale under section 237-4(a)(8)(B), the tax shall be one-half of one per cent of the gross proceeds. Upon every person engaging or continuing within this State in the business of a producer, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale.

(B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the Acts of the Congress of the United States which may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and Acts of Congress, there may be attributed gross proceeds of sales, the gross proceeds shall be so attributed.

(C) No manufacturer or producer, engaged in such business in the State and selling the manufacturer's or producer's products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer.

(D) A manufacturer or producer, engaged in such business in the State, shall pay the tax imposed in this chapter for the privilege of selling its products in the State, and the value or gross proceeds of sales of the products, thus subjected to tax, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the privilege of manufacturing or producing in the State; provided that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be required to pay the tax imposed in this chapter for the privilege of producing or selling those products.

(E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3)(C), and in that case the tax shall be computed pursuant to the election, notwithstanding this paragraph or paragraph (1) to the contrary.

(F) The department, by rule, may require that a seller take from the purchaser of tangible personal property a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(i) Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, the amount of the additional tax that is imposed upon the seller whenever the sale in fact is not at wholesale; and

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the sales of the business are exclusively at wholesale.

18-237-13-03

(3) Tax upon contractors.

(A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business.

(B) In computing the tax levied under this paragraph, there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of the tax levied under subparagraph (A), on another taxpayer who is a contractor, as defined in section 237-6; provided that any person claiming a deduction under this paragraph shall be required to show in the person's return the name and general excise number of the person paying the tax on the amount deducted by the person.

(C) In computing the tax levied under this paragraph against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:

(i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction; and

(ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the gross proceeds of the sale, and that the taxpayer elects to have the tax on gross income computed the same as upon a sale to the state government.

(D) A person who, as a business or as a part of a business in which the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by the person (whether held as a leasehold, fee simple, or otherwise), upon the sale or other disposition of the land or improvements, even if the work was not done pursuant to a contract, shall be liable to the same tax as if engaged in the business of contracting, unless the person shows that at the time the person was engaged in making the improvements the person intended, and for the period of at least one year after completion of the building, structure, or other improvements, the person continued to intend to hold and not sell or otherwise dispose of the land or improvements. The tax in respect of the improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of such building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount which would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by subparagraph (B). Upon the election of the taxpayer, this paragraph may be applied notwithstanding that the improvements were not made by the taxpayer, or were not made as a business or as a part of a business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent, which shall be taxable under paragraph (9); provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237-16.5, the tax shall be levied by section 237-16.5.

(4) Tax upon theaters, amusements, radio broadcasting stations, etc.

(A) Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to four per cent of the gross income of the business, and in the case of a sale of an amusement at wholesale under section 237-4(a)(13), the tax shall be one-half of one per cent of the gross income.

(B) The department may require that the person rendering an amusement at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the amusement, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering the amusement at wholesale.

(5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by the person.

18-237-13-06

(6) Tax on service business.

(A) Upon every person engaging or continuing within the State in any service business or calling including professional services not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of the business, and in the case of a wholesaler under section 237-4(a)(10), the tax shall be equal to one-half of one per cent of the gross income of the business.

18-237-13(6)

(B) The department may require that the person rendering a service at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the service, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering services at wholesale.

(C) Where any person is engaged in the business of selling interstate or foreign common carrier telecommunication services within and without the State, other than as a home service provider, the tax shall be imposed on that portion of gross income received by a person from service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State notwithstanding any other state law (except for the exemption under section 237-23(a)(1)) to the contrary. If, under the Constitution and laws of the United States, the entire gross income as determined under this paragraph of a business selling interstate or foreign common carrier telecommunication services cannot be included in the measure of the tax, the gross income shall be apportioned as provided in section 237-21; provided that the apportionment factor and formula shall be the same for all persons providing those services in the State.

(D) Where any person is engaged in the business of a home service provider, the tax shall be imposed on the gross income received or derived from providing interstate or foreign mobile telecommunications services to a customer with a place of primary use in this State when the services originate in one state and terminate in another state, territory, or foreign country; provided that all charges for mobile telecommunications services which are billed by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications originate, terminate, or pass through; provided further that the income from charges specifically derived from interstate or foreign mobile telecommunications services, as determined by books and records that are kept in the regular course of business by the home service provider in accordance with section 239-24, shall be apportioned under any apportionment factor or formula adopted under subparagraph (C). Gross income shall not include:

(i) Gross receipts from mobile telecommunications services provided to a customer with a place of primary use outside this State;

(ii) Gross receipts from mobile telecommunications services that are subject to the tax imposed by chapter 239;

(iii) Gross receipts from mobile telecommunications services taxed under section 237-13.8; and

(iv) Gross receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer.

For the purposes of this paragraph, "charges for mobile telecommunications services", "customer", "home service provider", "mobile telecommunications services", "place of primary use", and "serving carrier" have the same meaning as in section 239-22.

(7) Tax on insurance producers. Upon every person engaged as a licensed producer pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to 0.15 per cent of the commissions due to that activity.

18-237-13-08 (8) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer's legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other Acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received; provided that the tax levied hereunder on any amount so received and actually disbursed to another by a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making a benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.

18-237-13-10 (9) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted. [L 1935, c 141, §2 I; am L 1939, c 252, §§1, 2; am L 1943, c 81, pt of §1; RL 1945, §5455; am L 1945, c 100, §3 and c 253, §2; am L 1947, c 111, §9 and c 113, §7; am L 1953, c 183, §3; RL 1955, §117-14; am L 1957, c 34, §§5, 11(d) to (g); am L Sp 1957, c 1, §3(e) to (s); am L Sp 1959 2d, c 1, §16; am L 1960, c 4, §§2, 3, 4 and c 24, §1; am L 1962, c 27, §1; am L 1965, c 155, §14(a) to (h); am L 1966, c 28, §3; HRS §237-13; am L 1969, c 137, §1; am L 1970, c 180, §10; am L 1971, c 204, §§5, 6; am L 1977, c 160, §1; am L 1978, c 144, §2; am L 1982, c 204, §8; am L 1986, c 324, §1; am L 1991, c 21, §1; am L 1992, c 106, §6; am L 1993, c 188, §1; am L 1994, c 141, §1; am L 1997, c 353, §3; am L 1998, c 169, §§1, 3; am L 1999, c 71, §6 and c 173, §2; am L 2000, c 198, §3; am L 2002, c 209, §3; am L 2003, c 135, §3 and c 212, §3; am L 2008, c 16, §6; am L 2014, c 42, §2; am L 2015, c 22, §3; am L 2018, c 166, §2]

Cross Reference

Tax Information Release No. 42-74, "Application of the General Excise Tax to Interest Income"

Tax Information Release No. 47-75, "Guidelines for Establishing Status of Individual Insurance Solicitors as Employees or Independent Contractors"

Tax Information Release No. 54-78, "Taxation of Newspaper Printing and Publishing Companies"

Tax Information Release No. 81-2, "General Excise Tax Licensing and Reporting Requirements of Persons Transferring Rental Real Property to a Land Trust"

Tax Information Release No. 84-2, "Subcontract Deductions Claimed by General Contractors for Payment Made to Pest Control Operators Under the General Excise Tax Law, Chapter 237, HRS"

Tax Information Release No. 90-13, "General Excise Tax Imposed Upon a Person Receiving Gross Income from the Rental of Residential Real Property"

Tax Information Release No. 91-9, "General Excise Tax on the Gross Income of a Trustee in Bankruptcy"

Tax Information Release No. 92-5, "Application of the General Excise Tax on the Recovery of Real Property Taxes from Lessees and Sublessees"

Tax Information Release No. 93-5, "Use in Hawaii of the Uniform Sales and Use Tax Certificate (Multijurisdiction) Issued by the Multistate Tax Commission"

Tax Information Release No. 94-6, "Resale Certificates"

Tax Information Release No. 95-5, "Application of the General Excise ('GE') and Use Taxes on Sales of Tangible Personal Property ('TPP') by an Out-of-State Seller, Including Drop Shipments"

Tax Information Release No. 96-1, "Computer Company's Provision of In-State Repair Services Creates Nexus"

Tax Information Release No. 96-2, "Application of the Original Package Doctrine to the General Excise and Use Taxes"

Tax Information Release No. 98-2, "Application of the General Excise and Use Taxes to Certain Leasing Transaction"

Tax Information Release No. 98-5, "General Excise Tax Exemption for Tangible Personal Property, Including Souvenirs and Gift Items, Shipped Out of the State"

Tax Information Release No. 2000-1, "Imposition of the General Excise Tax on Retailing Activities Under Hawaii Revised Statutes (HRS)§§ 237-16 and 237-13"

Tax Information Release No. 2001-3, "United States Government Credit Cards Issued Under the 'GSA Smart Pay' Program"

Tax Information Release No. 2005-02, "Taxation of Income from Merchant Discount"

Tax Information Release No. 2006-03, "Taxation of Income from Merchant Discount"

Tax Information Release No. 2008-01, "Revocation of Outline, Act 70, SLH 1999 and Act 198, SLH 2000, Revocation of Outline, Act 71, SLH 1999 and Act 198, SLH 2000"

Tax Information Release No. 2008-02, "Advanced Notice of Proposed Administrative Rules Relating to the Taxation of the Motion Picture and Television Film Production Industry"

Tax Information Release No. 2011-02, "General Excise Taxation of Sales of Tangible Personal Property to the Federal Government and the Grandfathering Rules Under Act 105, SLH 2011"

Tax Information Release No. 2011-03, "Effect of Act 105, SLH 2011, on General Excise Tax Liability of Mobile Telecommunications Service Providers"

Tax Information Release No. 2018-01, "General Excise Tax Obligations of Transportation Network Companies and Drivers" Superseded by TIR 2025-01

Tax Information Release No. 2021-01, "General Excise Tax Imposition on the Film Industry"

Tax Information Release No. 2021-02, "Imposition of General Excise and Income Taxes on Statutory Employees"

Tax Information Release No. 2021-06, "General Excise Tax Treatment of Software"

Attorney General Opinions

General excise and use taxes may be applied to imported goods, no longer in transit, regardless of whether imported goods are in their original packages. Att. Gen. Op. 94-2.

Law Journals and Reviews

Rule of Strict Construction in Tax Cases, a Question of Classification or Exemption, Arthur B. Reinwald, 11 HBJ, no. 4, at 98 (1975).

Case Notes

Professions defined. 34 H. 245 (1937).

Tax on persons selling to post exchanges and ship's stores allowed. Not unconstitutional. 37 H. 314 (1946), aff'd 174 F.2d 21 (1949).

Radio stations. 40 H. 121 (1953), aff'd 216 F.2d 700 (1954).

Applicability of tax on selling to sales by manufacturer. 41 H. 615 (1957).

A business printing and publishing a daily newspaper, etc. is not a "manufacturer". 43 H. 154 (1959). See 279 F.2d 636, aff'g 43 H. 154. (1959)

"Canning" under prior law construed; packing frozen pineapples in hermetically sealed cans is not "canning". 45 H. 167, 363 P.2d 990 (1961).

Doubt in tax statute is to be resolved in favor of taxpayer. 45 H. 167, 363 P.2d 990 (1961).

Tax on foreign manufacturer's representative, no violation of commerce clause. 46 H. 269, 379 P.2d 336 (1963).

Arrangement between milk producers and distributor created agency, rather than sales relationship, and producers were not subject to tax at producing rate. 46 H. 292, 380 P.2d 156 (1963).

The tax on trucking business' gross receipts for services rendered wholly within the State involving through bills of lading does not violate the commerce clause. 48 H. 486, 405 P.2d 382 (1965).

Applicable rules of construction in tax cases. 50 H. 603, 446 P.2d 171 (1968).

Rates applicable to advertising revenues of a printing and publishing firm. 50 H. 603, 446 P.2d 171 (1968).

Individual earning livelihood as trustee in bankruptcy is covered by either paragraph (6) or (10) or both. 52 H. 56, 469 P.2d 814 (1970).

Commissions received by travel agencies are subject to tax; application of tax does not contravene the commerce or the import-export clauses. 53 H. 419, 495 P.2d 1172 (1972).

Failure to collect tax from some who fall within statute cannot excuse others from paying what they owe. 53 H. 419, 495 P.2d 1172 (1972).

Catchall paragraph (10) broad enough to cover paragraphs (6) and (8). 53 H. 435, 496 P.2d 1 (1972).

Fees received as trustee, executor, and corporate director were held subject to tax. 53 H. 435, 496 P.2d 1 (1972).

"Intermediary" within meaning of paragraph (6) defined as one who merely acts as a conduit for the services rendered between the taxpayer rendering the service and the customer receiving the services. 53 H. 518, 497 P.2d 908 (1972).

Exemptions from taxation construed strictly against taxpayer. 55 H. 572, 524 P.2d 890 (1974).

Statutes imposing taxes are strictly construed in favor of taxpayer. 56 H. 321, 536 P.2d 91 (1975).

Gross income earned by out-of-state lessor of film prints and telecast rights to be used in Hawaii is taxable under this section 57 H. 175, 554 P.2d 242 (1976).

Interest income earned by Nondomiciliary corporation from installment sales of Hawaiian land is subject to tax. 57 H. 436, 559 P.2d 264 (1977).

"Service business or calling" in paragraph (6) v. "wholesaler" construed. 63 H. 579, 633 P.2d 535 (1981).

Tax on value of services rendered on behalf of or furnished to wholly owned subsidiary corporations and interest on funds borrowed and disbursed on their account upheld. 65 H. 240, 649 P.2d 1155 (1982).

Slaughterhouse operator, hog raisers, and pork merchants are not "manufacturers". 69 H. 125, 735 P.2d 935 (1987).

Taxpayer's photoprocessing activities constituted "manufacturing," which was taxable at rate of 0.5%, rather than a "service," which would be taxable at rate of 4%. 79 H. 503, 904 P.2d 517 (1995).

Federal Aviation Act preempts the State's ability to assess general excise taxes on revenues derived from the sale of "air transportation"; however, the State may assess general excise taxes under §237-21 and paragraph (6) on that portion of the gross receipts that a freight forwarder receives for ground transportation and other non-air services it provides. 89 H. 51, 968 P.2d 653 (1998).

Delaware corporation came within the purview of paragraph (2) where it sold books to the state library for economic gain, its activities took place in the State, and through its business activity in Hawaii, obtained opportunities, protections, and benefits afforded by the State. 103 H. 359, 82 P.3d 804 (2004).

Where taxpayer gained or economically benefited from subleasing transactions, the director's assessment and imposition of the general excise tax for taxpayer's subleasing activities was proper. 110 H. 25, 129 P.3d 528 (2006).

Where management company for foreign insurer authorized to do business in Hawaii did not hold a general agent, subagent, or solicitor license under chapter 431, article 9 (1993), it could not have been legally appointed as either a general agent, subagent, or solicitor of insurer; thus it did not qualify as a "general agent", "subagent", or "solicitor" as defined by chapter 431 (1993), did not fall within the parameters of the category described by paragraph (7) and was thus subject to a general excise tax rate of four per cent pursuant to paragraph (6). 115 H. 180, 166 P.3d 353 (2007).

There were sufficient business and other activities in the State to impose the general excise tax on gross income of online travel companies, where the companies received income under agreements with transients to provide accommodations in Hawaii hotel rooms, the companies gained and economically benefited from the transactions, the transients were Hawaii consumers when they purchased a Hawaii hotel room from a company, the companies actively solicited customers for Hawaii hotel rooms, the occupancy rights that the companies sold to transients were only consumable in Hawaii, and the companies constructively benefited through the transients' access to police, fire, lifeguard, and other state services. 135 H. 88, 346 P.3d 157 (2015).

The federal Marine Transportation Security Act of 2002, codified at 33 U.S.C. §5(b), did not preempt the assessment of Hawaii general excise tax under paragraph (6)(A) on the charter fishing revenue of plaintiff Hawaii businesses as the general excise tax was a tax assessed on gross

business receipts for the privilege of doing business in Hawaii, and was not a tax on plaintiffs' vessels or passengers. 123 H. 494 (App.), 236 P.3d 1230 (2010).

Cited: 39 H. 157, 158 (1951); 40 H. 722, 728 (1955); 43 H. 131, 144 (1959); 44 H. 584, 587, 358 P.2d 539 (1961).

§237-13.3 REPEALED. L 2015, c 22, §8.

§237-13.5 Assessment on generated electricity. Any other provision of the law to the contrary notwithstanding, the levy and assessment of the general excise tax on the gross proceeds from the sale of electric power to a public utility company for resale to the public, shall be made only as a tax on the business of a producer, at the rate assessed producers, under section 237-13(2)(A). [L 1980, c 78, §2; am L 1981, c 103, §1; am L 1985, c 211, §1]

[§237-13.8] Sales of telecommunications services through prepaid telephone calling service. (a) For the purposes of this section, "prepaid telephone calling service" means the right to exclusively purchase telecommunication services, paid for in advance, that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed.

(b) If the sale or recharge of a prepaid telephone calling service does not take place at the vendor's place of business, it shall be conclusively determined to take place at the customer's shipping address; or if there is no item shipped, then it shall be the customer's billing address.

(c) When a person licensed under this chapter sells prepaid telephone calling services to a licensed retail merchant, jobber, or other licensed seller for purposes of resale, the person shall be taxed as a wholesaler selling tangible personal property. All other sales of prepaid telephone calling services shall be taxed as retail sales of tangible personal property.

(d) For purposes of prepaid telephone calling services only, all such services shall be taxed under this section and shall be in lieu of taxation under chapter 239. [L 2000, c 27, §1]

§237-14 Segregation of gross income, etc., on records and in returns. The imposition of taxes and the application of tax rates do not depend upon the business in which the taxpayer is primarily engaged. One business may be subject to two or more tax rates. If a business is within the purview of two or more of the paragraphs of section 237-13 or other provisions of this chapter all of them apply, each provision being applicable to the appropriate item of gross income, gross proceeds of sales, or value of products. However, any person engaging or continuing in a business having gross income, gross proceeds of sales, and value of products, or any of these as the case may be, taxable at different rates, shall be subject to taxation upon the aggregate amount of the gross income, gross proceeds of sales, and value of products of the business at the highest rate applicable to any part of the aggregate, unless the person shall segregate the parts taxable at different rates upon the person's records and in the person's returns, and shall sustain the burden of proving that the segregation was correctly made. [L 1957, c 34, §11(h); Supp, §117-14.1; HRS §237-14; am imp L 1984, c 90, §1; gen ch 1985]

Cross Reference

Tax Information Release No. 2000-1, "Imposition of the General Excise Tax on Retailing Activities Under Hawaii Revised Statutes (HRS)§§ 237-16 and 237-13"

Case Notes

Taxpayer may be subject to both the service business and retailing classifications to extent each is applicable to particular items of gross income. 53 H. 450, 497 P.2d 37 (1972).

§237-14.5 Segregation of gross income, etc., on records and in returns of telecommunications businesses. (a) Notwithstanding section 237-14, any person engaged in the business of selling interstate or foreign common carrier telecommunications services taxable under section 237-13(6)(C), or any public utility defined in section 269-1 having gross income from the conveyance or transmission of telephone or telegraph messages, or from the furnishing of facilities for the transmission of intelligence by electricity, may reasonably segregate in the person's returns, based on its books and records that are kept in the normal course of business:

(1) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under this chapter from the parts subject to taxation under chapter 239; and

(2) The parts of its gross income, gross proceeds of sales, and value of products subject to taxation under one provision of this chapter from the parts subject to taxation under any other provision of this chapter.

(b) The segregation shall be deemed valid so long as the method of segregation does not conflict with rules subsequently adopted by the department pursuant to this section. [L 2002, c 236, §1; am L 2008, c 16, §7]

§237-15 Technicians. When technicians supply dentists or physicians with dentures, orthodontic devices, braces, and similar items which have been prepared by the technician in accordance with specifications furnished by the dentist or physician, and such items are to be used by the dentist or physician in the dentist's or physician's professional practice for a particular patient who is to pay the dentist or physician for the same as a part of the dentist's or physician's professional

services, the technician shall be taxed as though the technician were a manufacturer selling a product to a licensed retailer, rather than at the rate of four per cent which is generally applied to professions and services. [L 1955, c 217, §1; RL 1955, §117-14.5; am L Sp 1957, c 1, §3(t); am L 1965, c 155, §14(i); HRS §237-15; am imp L 1984, c 90, §1; gen ch 1985]

18-237-16 **§237-16 REPEALED.** L 2003, c 135, §11.

18-237-16.5 **§237-16.5 Tax on written real property leases; deduction allowed.** (a) This section relates to the leasing of real property by a lessor to a lessee. There is hereby levied, and shall be assessed and collected annually, a privilege tax against persons engaging or continuing within the State in the business of leasing real property to another, equal to four per cent of the gross proceeds or gross income received or derived from the leasing; provided that where real property is subleased by a lessee to a sublessee, the lessee, as provided in this section, shall be allowed a deduction from the amount of gross proceeds or gross income received from its sublease of the real property. The deduction shall be in the amount allowed under this section.

All deductions under this section and the name and general excise tax number of the lessee's lessor shall be reported on the general excise tax return. Any deduction allowed under this section shall only be allowed with respect to leases and subleases in writing and relating to the same real property.

(b) The lessee shall obtain from its lessor a certificate, in the form as the department shall prescribe, certifying that the lessor is subject to tax under this chapter on the gross proceeds or gross income received from the lessee. The absence of the certificate in itself shall give rise to the presumption that the lessee is not allowed the deduction under this section.

(c) If various real property or space leased to the lessee have different rental values, then the total monetary gross proceeds or gross income paid to a lessor for all real property or space shall first be allocated to the fair rental value for each real property or space. If the lessee leases less than one hundred per cent of real property or space that was leased from the lessor to a sublessee, then the total monetary gross proceeds or gross income paid by the lessee for that real property or space to its lessor shall be allocated. The percentage of real property or space subleased shall be multiplied by the monetary gross proceeds or gross income paid for the real property or space by the lessee to its lessor. The product of the preceding multiplication shall be deducted from the monetary gross proceeds or gross income received for real property or space by the lessee.

Once the allocations are made, the appropriate deduction under subsection (g) shall be made.

(d) The lessor shall make allocations under this section at the time the sublease is entered into and the allocations shall not be changed during the term of the sublease. There shall be a reasonable basis for the allocations, taking into consideration the size, quality, and location of the real property or space subleased. In no event shall the total amount allocated to all subleases exceed the total monetary gross proceeds paid by the lessee to its lessor. The director may redetermine the amount of the deduction under this section if the director finds that the basis for allocation is not reasonable or that redetermination is necessary to prevent the avoidance of taxes.

(e) As used in this section:

"Lease" means the rental of real property under an instrument in writing by which one conveys real property for a specified term and for a specified consideration, and includes the written extension or renegotiation of a lease, and any holdover tenancy.

"Lessee" means one who holds real property under lease, and includes a sublessee.

"Lessor" means one who conveys real property by lease, and includes a sublessor.

"Real property or space" means the area actually rented and used by the lessee, and includes common elements as defined in section 514B-3.

"Sublease" includes the rental of real property which is held under a lease and is made in a written document by which one conveys real property for a specified term and for a specified consideration. A sublease includes the written extension or renegotiation of a sublease and any holdover tenancy under the written sublease.

"Sublessee" means one who holds real property under a sublease.

"Sublessor" means one who conveys real property by sublease.

(f) This section shall not cause the tax upon a lessor, with respect to any item of the lessor's gross proceeds or gross income, to exceed four per cent.

(g) After allocation under subsection (c), if necessary, the deduction under this section shall be allowed from the gross proceeds or gross income of the lessee received from its sublease in an amount calculated by multiplying the gross proceeds or gross income paid by the lessee to its lessor for the lease of the real property by .875.

The amount calculated shall be deducted by the lessee from the lessee's total reported gross proceeds or gross income. The deduction allowed by this subsection may be taken by the fiscal and calendar year lessees. [L 1997, c 353, §2; am L 2008, c 28, §4, am L 2015, c 22, §4; am L 2017, c 181, §9]

[§237-16.8] Exemption of certain convention, conference, and trade show fees. In addition to any other applicable exemption provided under this chapter, there shall be exempted from the measure of taxes imposed by this chapter all of the value or gross income derived by a fraternal benefit, religious, charitable, scientific, educational, or other nonprofit

organization under section 501(c) of the Internal Revenue Code of 1986, as amended, from fees for convention, conference, or trade show exhibit or display spaces; provided that the gross proceeds of sales by a vendor through the use of exhibit or display space at a conference, convention, or trade show shall be subject to the imposition of the general excise tax under section 237-13. [L 2004, c 214, §1]

Cross Reference

Tax Information Release No. 2011-01, "General Excise Taxation of Convention and Conference Fees"

§237-17 Persons with impaired sight, hearing, or who are totally disabled. Anything in section 237-13 to the contrary notwithstanding, the privilege tax levied, assessed, and collected on account of the business or other activities of individuals who are blind, deaf, or totally disabled, corporations all of whose outstanding shares are owned by individuals who are blind, deaf, or totally disabled, general, limited, or limited liability partnerships, all of whose partners are blind, deaf, or totally disabled, or limited liability companies, all of whose members are blind, deaf, or totally disabled, shall not exceed one-half of one per cent of the proceeds, sales, income, or other receipts subject to tax. For the purpose of this chapter "blind", "deaf", or "totally disabled" is defined as in section 235-1. The impairment of sight or hearing, or the disability, shall be certified to as provided in section 235-1. [L 1947, c 213, §8; am L 1953, c 139, §4; RL 1955, §117-15; am L 1959, c 246, §12; am L Sp 1959 2d, c 1, §19; am L 1960, c 4, §5; am L 1961, c 177, §2; am L 1966, c 28, §7; HRS §237-17; am L 1973, c 91, §2; am L 1988, c 81, §2; am L 2002, c 110, §2]

Cross Reference

Tax Information Release No. 89-3, "State Tax Benefits Available to Persons With Impaired Sight, Impaired Hearing, or Who Are Totally Disabled"
Tax Information Release No. 94-5, "Licensing Requirements for Certain Trusts Under Hawaii's General Excise Tax Law"
Tax Information Release No. 2022-01 (REVISED), "State Tax Benefits Available to Individuals Who are Blind, Deaf, or Totally Disabled"

§237-18 Further provisions as to application of tax. (a) Where a coin operated device produces gross income which is divided between the owner or operator of the device, on the one hand, and the owner or operator of the premises where the device is located, on the other hand, the tax imposed by this chapter shall apply to each such person with respect to the person's portion of the proceeds, and no more.

(b) Where gate receipts or other admissions are divided between the person furnishing or producing a play, concert, lecture, athletic event, or similar spectacle (including any motion picture showing) on the one hand, and a promoter (including any proprietor or other operator of a motion picture house) offering the spectacle to the public, on the other hand, the tax imposed by this chapter, if the promoter is subject to the tax imposed by this chapter, shall apply only to the promoter measured by the whole of the proceeds, and the promoter shall be authorized to deduct and withhold from the portion of the proceeds payable to the person furnishing or producing the spectacle the amount of the tax payable by the person upon such portion. No tax shall apply to a promoter with respect to such portion of the proceeds as is payable to a person furnishing or producing the spectacle, who is exempted by section 237-23 from taxation upon such activity.

(c) Where, through the activity of a person taxable under section 237-13(6), a product has been milled, processed, or otherwise manufactured upon the order of another taxpayer who is a manufacturer taxable upon the value of the entire manufactured products, which consists in part of the value of the services taxable under section 237-13(6), so much gross income as is derived from the rendering of the services shall be subjected to tax on the person rendering the services at the rate of one-half of one per cent, and the value of the entire product shall be included in the measure of the tax imposed on the other taxpayer as elsewhere provided.

(d) Where, through the activity of a person taxable under section 237-13(6), there have been rendered to a cane planter services consisting in the harvesting or hauling of the cane, or consisting in road maintenance, under a contract between the person rendering the services and the cane planter, covering the services and also the milling of the sugar, the services of harvesting and hauling the cane and road maintenance shall be treated the same as the service of milling the cane, as provided by subsection (c), and the value of the entire product, manufactured or sold for the cane planter under the contract, shall be included in the measure of the tax imposed on the personas elsewhere provided.

(e) Where insurance agents, including general agents, subagents, or solicitors, who are not employees and are licensed pursuant to chapter 431, or real estate brokers or salespersons, who are not employees and are licensed pursuant to chapter 467, produce commissions which are divided between such general agents, subagents, or solicitors, or between such real estate brokers or salespersons, as the case may be, the tax levied under section 237-13(6) as to real estate brokers or salespersons, or under section 237-13(7) as to insurance general agents, subagents, or solicitors shall apply to each such person with respect to the person's portion of the commissions, and no more.

(f) Where tourism related services are furnished through arrangements made by a travel agency or tour packager and the gross income is divided between the provider of the services and the travel agency or tour packager, the

tax imposed by this chapter shall apply to each such person with respect to such person's respective portion of the proceeds, and no more.

As used in this subsection "tourism related services" means catamaran cruises, canoe rides, dinner cruises, lei greetings, transportation included in a tour package, sightseeing tours not subject to chapter 239, admissions to luaus, dinner shows, extravaganzas, cultural and educational facilities, and other services rendered directly to the customer or tourist, but only if the providers of the services other than air transportation are subject to a four per cent tax under this chapter or chapter 239.

(g) Where transient accommodations are furnished through arrangements made by a travel agency or tour packager at noncommissioned negotiated contract rates and the gross income is divided between the operator of transient accommodations on the one hand and the travel agency or tour packager on the other hand, the tax imposed by this chapter shall apply to each such person with respect to such person's respective portion of the proceeds, and no more.

As used in this subsection, the words "transient accommodations" and "operator" shall be defined in the same manner as they are defined in section 237D-1.

(h) Where the transportation of passengers or property is furnished through arrangements between motor carriers, and the gross income is divided between the motor carriers, any tax imposed by this chapter shall apply to each motor carrier with respect to each motor carriers' respective portion of the proceeds.

As used in this subsection:

"Carrier" means a person who engages in transportation, and does not include a person such as a freight forwarder or tour packager who provides transportation by contracting with others, except to the extent that such person oneself engages in transportation.

"Contract carrier" means a person other than a public utility as defined under section 239-2 or taxicab, which under contracts or agreements, engages in the transportation of persons or property for compensation, by land, water, or air.

"Motor carrier" means a common carrier or contract carrier transporting persons or property for compensation on the public highways, other than a public utility as defined under section 239-2 or taxicab.

"Public highways" has the meaning defined by section 264-1 including both state and county highways, but operation upon rails shall not be deemed transportation on the public highways. [L 1949, c 252, §1; am L 1951, c 165, §4; am L 1953, c 68, §1; RL 1955, §117-16; am L 1957, c 34, §6; am L Sp 1957, c 1, §3(v), (w), (x); am L 1959, c 257, §3; am L 1960, c 4, §6; am L 1963, c 87, §1; am L 1965, c 155, §14(1); HRS §237-18; am L 1970, c 180, §11; am L 1977, c 198, §1; am L 1978, c 144, §3; am imp L 1984, c 90, §1; gen ch 1985; am L 1986, c 340, §7; am L 1988, c 167, §1; am L 1991, c 287, §1; gen ch 1992; am L Sp 2001 3d, c 9, §3; am L 2003, c 135, §4]

Cross Reference

Tax Information Release No. 2008-01, "Revocation of Outline, Act 70, SLH 1999 and Act 198, SLH 2000, Revocation of Outline, Act 71, SLH 1999 and Act 198, SLH 2000"

Tax Information Release No. 2008-02, "Advanced Notice of Proposed Administrative Rules Relating to the Taxation of the Motion Picture and Television Film Production Industry"

Tax Information Release No. 2016-01, "Amendment to General Instructions for Filing the General Excise/Use Tax Returns (Forms G-45 and G-49) Relating to Transient Accommodations Rentals"

Tax Information Release No. 2021-01, "General Excise Tax Imposition on the Film Industry"

Attorney General Opinions

Hauling contractor rendering services on behalf of an intermediary must report income at retail rate. Att. Gen. Op. 64-9.

Case Notes

Slaughterhouse operator, whose customers are wholesalers and producers, is not a "manufacturer". 69 H. 125, 735 P.2d 935 (1987).

General excise tax apportioning provision applied to transactions of online travel companies operating Internet websites on which transients could make reservations with third-party travel suppliers, where the companies operated as travel agencies, the gross income resulting from the transactions was divided between the companies and the operators of transient accommodations, and the transactions supplied transient accommodations at noncommissioned negotiated contract rates. 135 H. 88, 346 P.3d 157 (2015).

§237-19 REPEALED. L 2002, c 153, §5.

Cross Reference

For similar provision, see §231-3.1.

18-237-20 **§237-20 Principles applicable in certain situations.** A person or company having shareholders or members (a corporation, association, group, trust, partnership, joint adventure, or other person) is taxable upon its business with them, and they are taxable upon their business with it. A person or company, whether or not called a cooperative, through which shareholders or members are pursuing a common objective (for example, the obtaining of property or services for their individual businesses or use, or the marketing of their individual products) is a taxable person, and such facts do not give rise to any tax exemption or tax benefit except as specifically provided. Even though a business has some of the aspects of agency it shall not be so regarded unless it is a true agency. The reimbursement of costs or advances made for or on behalf

of one person by another shall not constitute gross income of the latter, unless the person receiving such reimbursement also receives additional monetary consideration for making such costs or advances. [L 1957, c 34, §11(i); am L 1965, c 201, §24; Supp, §117-17.1; am L 1967, c 297, §2; HRS §237-20; am L 1985, c 303, §1; am L 1986, c 340, §8]

Law Journals and Reviews

Rule of Strict Construction in Tax Cases, a Question of Classification or Exemption, Arthur B. Reinwald, 11 HBJ, no. 4, at 98 (1975).

Case Notes

Amounts received from manufacturer by taxpayer for warranty service work constituted, not reimbursement, but taxable gross income. 56 H. 321, 536 P.2d 91 (1975).

"Cost" means monetary amount paid out by taxpayer for property or service furnished by a third party. 56 H. 321, 536 P.2d 91 (1975).

Payments by joint venture to member for services rendered joint venture were subject to general excise taxation. 59 H. 307, 582 P.2d 703 (1978).

The reimbursement provision of this section did not apply to taxpayer where taxpayer did not pay any costs or made any advances to the landlords and the record did not indicate that the taxpayer received a reimbursement of a cost or advance. 110 H. 25, 129 P.3d 528 (2006).

Taxpayer partnership's provision of medical equipment and ancillary services to its joint venture constituted "business" under §237-2 and was thus made subject to the general excise tax by this section. 93 H. 267 (App.), 999 P.2d 865 (2000).

Hawaii Legal Reporter Citations

Agency relationship not required. 80-2 HLR 800927.

Reimbursement of costs or advances. 80-2 HLR 800927.

§237-21 Apportionment. If any person, other than persons liable to the tax on manufacturers as provided by section 237-13(1), is engaged in business both within and without the State or in selling goods for delivery outside the State, and if under the Constitution or laws of the United States or section 237-29.5 the entire gross income of such person cannot be included in the measure of this tax, there shall be apportioned to the State and included in the measure of the tax that portion of the gross income which is derived from activities within the State, to the extent that the apportionment is required by the Constitution or laws of the United States or section 237-29.5. In the case of a tax upon the production of property in the State the apportionment shall be determined as in the case of the tax on manufacturers. In other cases, if and to the extent that the apportionment cannot be accurately made by separate accounting methods, there shall be apportioned to the State and included in the measure of this tax that proportion of the total gross income, so requiring apportionment, which the cost of doing business within the State, applicable to the gross income, bears to the cost of doing business both within and without the State, applicable to the gross income. [L 1941, c 115, §1; RL 1945, §5457; RL 1955, §117-18; am L 1959, c 277, §2; HRS §237-21; am L 1987, c 239, §5; am L 1999, c 70, §3]

Cross Reference

Tax Information Release No. 95-5, "Application of the General Excise (`GE') and Use Taxes on Sales of Tangible Personal Property (`TPP') by an Out-of-State Seller, Including Drop Shipments"

Tax Information Release No. 2008-01, "Revocation of Outline, Act 70, SLH 1999 and Act 198, SLH 2000, Revocation of Outline, Act 71, SLH 1999 and Act 198, SLH 2000"

Attorney General Opinions

Branch office of mainland travel agency subject to tax on certain portion of earnings. Att. Gen. Op. 65-6.

Case Notes

Tax on trucking business' gross receipts for services rendered wholly within the State not subject to apportionment. 48 H. 486, 405 P.2d 382 (1965).

Apportionment found unnecessary where taxable income consisted of interest income derived from sale of land located in Hawaii. 57 H. 436, 559 P.2d 264 (1977).

Federal Aviation Act preempts the State's ability to assess general excise taxes on revenues derived from the sale of "air transportation"; however, the State may assess general excise taxes under §237-13(6) and this section on that portion of the gross receipts that a freight forwarder receives for ground transportation and other non-air services it provides. 89 H. 51, 968 P.2d 653 (1998).

§237-22 Conformity to Constitution, etc. (a) In computing the amounts of any tax imposed under this chapter, there shall be excepted or deducted from the values, gross proceeds of sales, or gross income so much thereof as, under the Constitution and laws of the United States, the State is prohibited from taxing, but only so long as and only to the extent that the State is so prohibited.

(b) To the extent that any deduction, allocation, or other method to determine tax liability is necessary to comply with subsection (a), each taxpayer liable for the tax imposed by this chapter shall be entitled to full offset for the amount of legally imposed sales, gross receipts, or use taxes paid by the taxpayer with respect to the imported property, service, or contracting to another state and any subdivision thereof; provided that such offset shall not exceed the amount of general excise tax imposed under this chapter upon the gross proceeds of sales or gross income from the sale and subsequent sale of the imported property, service, or contracting. The amount of legally imposed sales, gross receipts, or use taxes paid by the taxpayer with respect to the import shall be first applied against any use tax, as

permitted under section 238-3(i), and any remaining amount may be applied under this section for the same imported property, service, or contracting.

The director of taxation shall have the authority to implement this offset by prescribing tax forms and instructions that require tax reporting and payment by deduction, allocation, or any other method to determine tax liability to the extent necessary to comply with the foregoing.

The director of taxation may require the taxpayer to produce the necessary receipts or vouchers indicating the payment of the sales, gross receipts, or use taxes to another state or subdivision as a condition for the allowance of this offset. [L 1935, c 141, §3; RL 1945, §5458; RL 1955, §117-19; am L 1957, c 34, §11(j); HRS §237-22; am L 2002, c 98, §2]

Cross Reference

Tax Information Release No. 81-6, "General Excise Tax Upon Gross Receipts from the Sale of Liquor and Other Beverages During Flights Between the Islands"

Tax Information Release No. 89-10, "Taxability of Gross Receipts Derived by Helicopter Tour Operators"

Tax Information Release No. 95-5, "Application of the General Excise ('GE') and Use Taxes on Sales of Tangible Personal Property ('TPP') by an Out-of-State Seller, Including Drop Shipments"

Tax Information Release No. 96-1, "Computer Company's Provision of In-State Repair Services Creates Nexus"

Tax Information Release No. 96-2, "Application of the Original Package Doctrine to the General Excise and Use Taxes"

Tax Information Release No. 2002-4, "Act 98, Session Laws of Hawaii 2002, Relating to the Conformity of the State Tax Laws to the United States Constitution (Act 98)"

Case Notes

Radio stations. 40 H. 121 (1953), aff'd 216 F.2d 700 (1954).

Tax on foreign manufacturer's representative held not in violation of commerce clause. 46 H. 269, 379 P.2d 336 (1963).

Cited: 48 H. 486, 503, 405 P.2d 382 (1965).

§237-23 Exemptions, persons exempt, applications for exemption. (a) This chapter shall not apply to the following persons:

(1) Public service companies as that term is defined in section 239-2, with respect to the gross income, either actual gross income or gross income estimated and adjusted, that is included in the measure of the tax imposed by chapter 239;

(2) Public utilities owned and operated by the State or any county, or other political subdivision thereof;

(3) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, a legal service plan, or other benefits to the members of the societies, orders, or associations, and to their dependents;

(4) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended, as well as that of operating a legal service plan, as well as that of operating or managing a homeless facility, or any other program for the homeless authorized under part XVII of chapter 346;

(5) Business leagues, chambers of commerce, boards of trade, civic leagues, agricultural and horticultural organizations, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare that shall include the operation of a legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;

(6) Hospitals, infirmaries, and sanitaria;

(7) Companies that provide potable water to residential communities that lack any access to public utility water services and are tax exempt under section 501(c)(12) of the Internal Revenue Code of 1986, as amended;

(8) Cooperative associations incorporated under chapter 421 or Code section 521 cooperatives which fully meet the requirements of section 421-23, except Code section 521 cooperatives need not be organized in Hawaii; provided that:

(A) The exemption shall apply only to the gross income derived from activities that are pursuant to purposes and powers authorized by chapter 421, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;

(B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all those persons shall be so taxable; and

(C) As used in this paragraph, "Code section 521 cooperatives" mean associations that qualify as a cooperative under section 521 (with respect to exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;

(9) Persons affected with Hansen's disease and kokuas, with respect to business within the county of Kalawao;

(10) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual; provided that the exemption shall apply only to the activities of those persons in the conduct of cemeteries and shall not apply to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of those persons; and

(11) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations.

(b) The exemptions enumerated in subsection (a)(3) to (7) shall apply only:

(1) To those persons who shall have registered with the department of taxation by filing a written application for registration in such form as the department shall prescribe, shall have paid the registration fee of $20, and shall have had the exemption allowed by the department or by a court or tribunal of competent jurisdiction upon appeal from any assessment resulting from disallowance of the exemption by the department;

(2) To activities from which no profit inures to the benefit of any private stockholder or individual, except for death or other benefits to the members of fraternal societies; and

(3) To the fraternal, religious, charitable, scientific, educational, communal, or social welfare activities of such persons, or to the activities of hospitals, infirmaries, sanitaria, and potable water companies, as such, and not to 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 of such persons.

(c) To obtain allowance of an exemption:

(1) A person under subsection (a)(3) to (7), who has received or applied for recognition of tax exempt status under section 501(c)(3), (4), (6), (8), or (12) of the Internal Revenue Code of 1986, as amended, or who is a subordinate person of a person who has received a group exemption letter under section 501(c)(3), (4), (6), (8), or (12) of the Internal Revenue Code of 1986, as amended, shall register with the department by filing a statement attaching a copy of the exemption or application for recognition of exempt status and any particular facts that the department may require; and

(2) All other persons under subsection (a)(3) to (7) shall file an application for exemption in the form of an affidavit or affidavits setting forth in general all facts affecting the right to the exemption and any particular facts that the department may require, to which shall be attached any records, papers, and other information as the department may prescribe.

(d) For all persons, the statement registering the person with the department or application for exemption shall be filed on or before March 31 of the first year of registration or within three months after the commencement of business. In the event of allowance of the exemption, no further statement or application therefor need be filed unless there is a material change in the facts. In the event of disallowance of the exemption, a license may be obtained upon payment of the required fee as provided by section 237-9, less the $20 already paid under this section, which shall be credited thereon. In the event the registrant has a license under this chapter, no further fee shall be required for registration under this section.

(e) The department for good cause may extend the time for registration or the time for filing an application for exemption. [L 1935, c 141, §4(1); am L 1941, c 265, §2; RL 1945, §5459; am L 1945, c 158, §1 and c 253, §3; am L 1949, c 234, §3; RL 1955, §117-20; am L Sp 1957, c 1, §3(y), (z); am L 1959, c 252, §39 and c 277, §3; am L Sp 1959 2d, c 1, §16; am L 1963, c 147, §1; am L 1965, c 201, §38 and c 224, §3; am L 1967, c 39, §1 and c 159, §1; HRS §237-23; am L 1969, c 152, §1; am L 1970, c 180, §12; am L 1971, c 4, §3; am L 1976, c 156, §10 and c 203, §5; am L 1979, c 105, §23; am L 1980, c 213, §1; am L 1982, c 92, §5; am L 1987, c 39, §4; am L 1988, c 173, §2; am L 1989, c 6, §4 and c 266, §3; am L 1990, c 109, §1; am L 1991, c 212, §4 and c 286, §3; am L 1992, c 106, §7; am L Sp 1995, c 20, §5; am L 1997, c 350, §17; am L 1998, c 212, §3; am L 2001, c 125, §1; am L 2007, c 249, §17; am L 2010, c 89, §4; am L 2012, c 34, §21 and c 184, §3; am L 2015, c 18, §1]

Cross Reference

Tax Information Release No. 21-69, "General Excise Tax and Real Property Tax Exemptions as Applicable to Pre-Schools or Day-Care Centers Operated by Churches"

Tax Information Release No. 89-6, "General Excise Tax on the Fund-Raising Activities of Public School Sponsored Groups"

Tax Information Release No. 89-13, "Application for Exemption from the Payment of General Excise Taxes for Non-Profit Organizations"

Tax Information Release No. 91-2, "Taxability of Gross Proceeds Received by a Nonprofit Organization From the Sale of Donated Services or Tangible Personal Property"

Tax Information Release No. 91-4, "Hawaii Tax Obligations of Nonprofit Organizations"

Tax Information Release No. 2011-01, "General Excise Taxation of Convention and Conference Fees"

Tax Information Release No. 2011-04, " General Excise Tax Reporting Requirements for Nonprofit Organizations"

Attorney General Opinions

Exemption of corporation operating a nonprofit medical and hospital service program under contract with individuals and groups. Att. Gen. Op. 64-6.

Law Journals and Reviews

Rule of Strict Construction in Tax Cases, a Question of Classification or Exemption. 11 HBJ, no. 4, at 98 (1975).

The "Aloha Corporation:" Infusing the Culture of Hawai'i to Broaden the Perspective of Business and Return to Community. 34 UH L. Rev. 221 (2012).

Case Notes

Charitable trust doing business within Territory liable for excise tax. 33 H. 371 (1935).

Where primary purpose of rental activity was not production of income, rental income was exempt from tax under subs. (b)(3). 53 H. 1, 486 P.2d 396 (1971).

Statutes granting exemptions are strictly construed against taxpayer. 56 H. 321, 536 P.2d 91 (1975).

Derogation from common rate is an exemption and strictly construed. 56 H. 644, 547 P.2d 1343 (1976).

Maintenance of a nonprofit retirement residents for the elderly as a charitable purpose. 63 H. 199, 624 P.2d 1346 (1981).

Income to exempt organization from work performed by resident beneficiaries had primary purpose of producing income. 65 H. 199, 649 P.2d 1126 (1982).

Interest payments received from sale of real property not exempt. 65 H. 199, 649 P.2d 1126 (1982).

"Rental" income from residents and staff did not have primary purpose of producing income. 65 H. 199, 649 P.2d 1126 (1982).

Operation of a parking garage and physician's office building are not hospital activities "as such" that exempts the income derived from taxation. 66 H. 318, 661 P.2d 1201 (1983).

Cited: 41 H. 615, 617 (1957).

§237-23.5 Related entities; common paymaster; certain exempt transactions. (a) This chapter shall not apply to amounts received, charged, or attributable to services furnished by one related entity to another related entity or to imputed or stated interest attributable to loans, advances, or use of capital between related entities.

As used in this subsection:

"Related entities" means:

(1) An affiliated group of corporations within the meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended;

(2) A controlled group of corporations within the meaning of section 1563 (with respect to definitions and special rules) of the federal Internal Revenue Code of 1986, as amended;

(3) Those entities connected through ownership of at least eighty per cent of the total value and at least eighty per cent of the total voting power of each such entity (or combination thereof), including partnerships, associations, trusts, S corporations, nonprofit corporations, limited liability partnerships, or limited liability companies; and

(4) Any group or combination of the entities described in paragraph (3) constituting a unitary business for income tax purposes;

whether or not the entity is located within or without the State or licensed under this chapter.

"Services" means legal and accounting services, the use of computer software and hardware, information technology services, database management, and those managerial and administrative services performed by an employee, officer, partner, trustee, sole proprietor, member, or manager in the person's capacity as an employee, officer, partner, trustee, sole proprietor, member, or manager of one of the related entities and shall include overhead costs attributable to those services.

(b) This chapter shall not apply to amounts received by common paymasters which are disbursed as remuneration to employees of two or more related corporations where the common paymaster is making such remunerations on behalf of such corporations. Such amounts received or disbursed by the common paymaster shall include payments of payroll taxes and employee benefits which the common paymaster is making on behalf of related corporations and which payments are related to the employees being remunerated. The definitions of related corporations, common paymaster, multiple common paymasters, and concurrent employment contained in 26 Code of Federal Regulations, section 31.3121(s)-1(b) are incorporated and made apart of this subsection.

To the extent not covered by subsection (a), the exemption allowed by this subsection shall not apply to the cost of services, or reimbursements of such cost by one corporation to another corporation, of an employee disbursing the amounts exempted under this subsection. Each related corporation using a common paymaster or multiple common paymaster shall keep separate payroll records and other documentation required to prove the existence of concurrent employment. Such records and documents shall be available for inspection by the director of taxation during normal business hours. [L 1988, c 175, §1; am L 1997, c 178, §4; am L 1999, c 165, §1; am L 2001, c 221, §12]

Cross Reference

Tax Information Release No. 2008-01, "Revocation of Outline, Act 70, SLH 1999 and Act 198, SLH 2000, Revocation of Outline, Act 71, SLH 1999 and Act 198, SLH 2000"

§237-24 Amounts not taxable. This chapter shall not apply to the following amounts:

(1) Amounts received under life insurance policies and contracts paid by reason of the death of the insured;

(2) Amounts received (other than amounts paid by reason of death of the insured) under life insurance, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract;

(3) Amounts received under any accident insurance or health insurance policy or contract or under workers' compensation acts or employers' liability acts, as compensation for personal injuries, death, or sickness,

including also the amount of any damages or other compensation received, whether as a result of action or by private agreement between the parties on account of the personal injuries, death, or sickness;

(4) The value of all property of every kind and sort acquired by gift, bequest, or devise, and the value of all property acquired by descent or inheritance;

(5) Amounts received by any person as compensatory damages for any tort injury to the person, or to the person's character reputation, or received as compensatory damages for any tort injury to or destruction of property, whether as the result of action or by private agreement between the parties (provided that amounts received as punitive damages for tort injury or breach of contract injury shall be included in gross income);

(6) Amounts received as salaries or wages for services rendered by an employee to an employer;

(7) Amounts received as alimony and other similar payments and settlements;

(8) Amounts collected by distributors as fuel taxes on "liquid fuel" imposed by chapter 243, and the amounts collected by such distributors as a fuel tax imposed by any Act of the Congress of the United States;

(9) Taxes on liquor imposed by chapter 244D on dealers holding permits under that chapter;

(10) The amounts of taxes on cigarettes and tobacco products imposed by chapter 245 on wholesalers or dealers holding licenses under that chapter and selling the products at wholesale;

(11) Federal excise taxes imposed on articles sold at retail and collected from the purchasers thereof and paid to the federal government by the retailer;

(12) The amounts of federal taxes under chapter 37 of the Internal Revenue Code, or similar federal taxes, imposed on sugar manufactured in the State, paid by the manufacturer to the federal government;

(13) An amount up to, but not in excess of, $2,000 a year of gross income received by any blind, deaf, or totally disabled person engaging, or continuing, in any business, trade, activity, occupation, or calling within the State; a corporation all of whose outstanding shares are owned by an individual or individuals who are blind, deaf, or totally disabled; a general, limited, or limited liability partnership, all of whose partners are blind, deaf, or totally disabled; or a limited liability company, all of whose members are blind, deaf, or totally disabled;

(14) Amounts received by a producer of sugarcane from the manufacturer to whom the producer sells the sugarcane, where:

(A) The producer is an independent cane farmer, so classed by the Secretary of Agriculture under the Sugar Act of 1948 (61 Stat. 922, Chapter 519) as the Act may be amended or supplemented;

(B) The value or gross proceeds of the sale of the sugar, and other products manufactured from the sugarcane, are included in the measure of the tax levied on the manufacturer under section 237-13(1) or (2);

(C) The producer's gross proceeds of sales are dependent upon the actual value of the products manufactured therefrom or the average value of all similar products manufactured by the manufacturer; and

(D) The producer's gross proceeds of sales are reduced by reason of the tax on the value or sale of the manufactured products;

(15) Money paid by the State or eleemosynary child-placing organizations to foster parents for their care of children in foster homes;

(16) Amounts received by a cooperative housing corporation from its shareholders in reimbursement of funds paid by the corporation for lease rental, real property taxes, and other expenses of operating and maintaining the cooperative land and improvements; provided that the cooperative corporation is a corporation:

(A) Having one and only one class of stock outstanding;

(B) Each of the stockholders of which is entitled solely by reason of the stockholder's ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building owned or leased by the corporation; and

(C) No stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation; and

(17) Amounts received by a contractor of the Patient-Centered Community Care program that is established by the United States Department of Veterans Affairs pursuant to title 38 United States Code section 8153, as amended, for the actual costs or advancements to third party health care providers pursuant to a contract with the United States. [L 1935, c 141, §4(2); am L 1939, c 47, §1; am L 1943, c 81, §2; RL 1945, §5460; am L 1945, c 253, §4; am L 1947, c 213, §1; am L 1949, c 343, §11; am L 1953, c 229, §1; am L 1955, c 246, §5; RL 1955, §117-21; am L 1957, c 34, §11(k); am L 1959, c 277, §4(a); am L Sp 1959 2d, c 1, §16; am L 1964, c 5, §2; am L 1965, c 201, §§3, 25; am L 1966, c 28, §4; am L 1967, c 297, §§3, 4; HRS §237-24; am L 1968, c 26, §2; am L 1971, c 204, §7; am L 1973, c 91, §3; am L 1975, c 41, §1; am L 1979, c 74, §1 and c 105, §24; am L 1985, c 16, §7 and c 88, §1; gen ch 1985; am L 1986, c 86, §1, c 306, §2 and c 340, §9; am L 1987, c 7, §1, c 15, §1, c 39, §5, and c 292, §1; am L 1988, c 65, §2; am L 1989, c 8, §1; am L 1992, c 107, §1; am L 1993, c 43, §1 and c 220, pt of §2; am L 1994, c 141, §2; am L 2002, c 110, §3; am L 2009, c 70, §2; am L 2013, c 164, §2; am L 2014, c 143, §2]

Note

Former paragraphs (17) to (25) are now part of §237-24.3.

The 2014 amendment is exempt from the December 31, 2018 repeal and reenactment condition of L 2009, c 70, §4, as amended by L 2013, c 164, §2. L 2014, c 143, §4.

The repeal and reenactment notes at paragraphs (14), (15), and (16) and the repeal note at paragraph (17) in the main volume took effect on December 31, 2018, pursuant to L 2013, c 164, §2.

Cross Reference

Tax Information Release No. 23-69, "Sales of Liquor and Tobacco Products from Bonded Warehouses to Foreign Fishing Vessels and to Common Carriers"

Tax Information Release No. 65-79, "State Taxation of Homeowners Associations for Income, General Excise and Use Taxes"

Tax Information Release No. 86-3, "Exemption From the General Excise Tax for Amounts Received on Purchases Made With U.S. Department of Agriculture Food Coupons"

Tax Information Release No. 86-4, "Exemption From the General Excise Tax for Amounts Received for the Sale of Prescription Drugs and Prosthetic Devices"

Tax Information Release No. 87-3, "Exemption From the General Excise Tax for Amounts Received on Purchases Made With U.S. Department of Agriculture WIC Food Vouchers"

Tax Information Release No. 89-3, "State Tax Benefits Available to Persons With Impaired Sight, Impaired Hearing, or Who Are Totally Disabled"

Tax Information Release No. 91-1, "General Excise Tax Treatment of Federal Luxury Taxes Collected"

Tax Information Release No. 94-5, "Licensing Requirements for Certain Trusts Under Hawaii's General Excise Tax Law"

Tax Information Release No. 2018-02, "General Excise Tax Exemption for TRICARE"

Tax Information Release No. 2021-02, "Imposition of General Excise and Income Taxes on Statutory Employees"

Tax Information Release No. 2022-01 (REVISED), "State Tax Benefits Available to Individuals Who are Blind, Deaf, or Totally Disabled"

Attorney General Opinions

Subsection (p) exempts certain reimbursement funds of cooperative housing corporations from the general excise tax. Att. Gen. Op. 68-2.

Pars. (18), (21): Effect of resolution of House relating to enforcement of provisions. Att. Gen. Op. 68-6.

Case Notes

Paragraph (6). Fees paid to director of corporation are not exempt as salary or wages paid to employee. 53 H. 435, 496 P.2d 1 (1972).

§237-24.3 Additional amounts not taxable. In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

(1) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms "agricultural commodity", "producer", and "produce dealer" shall be defined in the same manner as they are defined in section 147-1; provided that agricultural commodities need not have been produced in the State;

(2) Amounts received by the manager, submanager, or board of directors of:

(A) An association of a condominium property regime established in accordance with chapter 514B or any predecessor thereto; or

(B) A nonprofit homeowners or community association incorporated in accordance with chapter 414D or any predecessor thereto and existing pursuant to covenants running with the land,

in reimbursement of sums paid for common expenses;

(3) Amounts received or accrued from:

(A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, including stevedoring services as defined in section 382-1, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;

(B) Tugboat services including pilotage fees performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another;

(C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines; and

(D) Wharfage and demurrage imposed under chapter 266 that is paid to the department of transportation;

(4) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan; provided that this exemption shall not apply to any gross rental income or gross rental proceeds received after June 30, 1994, as income from investments in real property in this State; and provided further that gross rental income or gross rental proceeds from investments in real property received by an employee benefit plan after June 30, 1994, under written contracts executed prior to July 1, 1994, shall not be taxed until the contracts are renegotiated, renewed, or extended, or until after December 31, 1998, whichever is earlier. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in title 29 United States Code section 1002(3), as amended;

(5) Amounts received for purchases made with United States Department of Agriculture food coupons under the federal food stamp program, and amounts received for purchases made with United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;

(6) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual; provided that this paragraph shall not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices. As used in this paragraph:

"Prescription drugs" are those drugs defined under section 328-1 and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs; provided that "prescription drugs" shall not include cannabis or manufactured cannabis products authorized pursuant to chapters 329 and 329D.

"Prosthetic device" means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body, which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and that is sold by the practitioner or that is dispensed and sold by a dealer of prosthetic devices; provided that "prosthetic device" shall not mean any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;

(7) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter;

(8) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership;

(9) Amounts received by a labor organization for real property leased to:

(A) A labor organization; or

(B) A trust fund established by a labor organization for the benefit of its members, families, and dependents for medical or hospital care, pensions on retirement or death of employees, apprenticeship and training, and other membership service programs.

As used in this paragraph, "labor organization" means a labor organization exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code, as amended;

(10) Amounts received from foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes;

(11) Amounts received as rent for the rental or leasing of aircraft or aircraft engines used by the lessees or renters for interstate air transportation of passengers and goods. For purposes of this paragraph, payments made pursuant to a lease shall be considered rent regardless of whether the lease is an operating lease or a financing lease. The definition of "interstate air transportation" is the same as in 49 U.S.C. section 40102; and

(12) Amounts received by a hospital, infirmary, medical clinic, health care facility, or pharmacy, or a medical or dental practitioner, for healthcare-related goods or services purchased under the medicare, medicaid, or TRICARE programs. For the purposes of this paragraph, the healthcare-related services need not be performed by a medical or dental practitioner but may be performed by a physician's assistant, nurse, or other employee under the medical or dental practitioner's direction. As used in this paragraph:

"Medicaid" means the program established under Title XIX of the Social Security Act of 1935, as amended;

"Medical or dental practitioner" means a physician or osteopathic physician licensed pursuant to chapter 453; a dentist licensed under chapter 448; an advanced practice registered nurse licensed pursuant to chapter 457; or a pharmacist licensed pursuant to chapter 461;

"Medicare" means the program established under Title XVIII of the Social Security Act of 1935, as amended; and

"TRICARE" means the program of the Department of Defense military health system managed by the Defense Health Agency, or any successor program. [L 1993, c 220, pt of §2 and am c 43, §1; am L 1994, c 116, §1; am L 2000, c 38, §1; am L 2001, c 210, §2; am L 2002, c 40, §7; am L 2003, c 135, §5; am L 2007, c 239, §§1, 4; am L 2008, c 28, §26; am L 2009, c 196, §5; am L 2010, c 91, §1; am L 2013, c 160, §§2, 4 and c 163, §1; am L 2016, c 230, §5; am L 2017, c 170, §2 and c 181, §10; am L 2022, c 80, §2; am L 2024, c 47, §2]

Revision Note

In paragraph (6), "marijuana" changed to "cannabis" to conform to L 2017, c 170, pursuant to §23G-15.

Cross Reference

Tax Information Release No. 93-4, "Application of Section 237-24.3(1)(C), Hawaii Revised Statutes (HRS)(Formerly Section 237-24(18)(C), HRS)(Note: the reference to section 237-24.3(1)(C) should be to section 237-24.3(2)(C))"

Tax Information Release No. 98-5, "General Excise Tax Exemption for Tangible Personal Property, Including Souvenirs and Gift Items, Shipped Out of the State"

Tax Information Release No. 2025-02, "General Excise Tax Exemption for Amounts Received for Healthcare-Related Goods and Services Purchased Under Medicare, Medicaid, or TRICARE"

§237-24.5 Additional exemptions. (a) In addition to the amounts exempt under section 237-24, this chapter shall not apply to amounts received by:

(1) An exchange from:

(A) Transaction fees charged exchange members by the exchange for:

(i) The sale or purchase of securities or products, or both, bought or sold on an exchange by exchange members for their own account or an account for which they have responsibility as an agent, broker, or fiduciary;

(ii) Order book executions made for purposes of effecting transactions; and

(iii) Trade processing performed by an exchange in matching trades, keypunching, record keeping, post cashiering, and notarization;

(B) Membership dues, fees, charges, assessments, and fines from individuals or firms, including charges for firm symbols (member identification), application processing, registration, initiation, membership transfers, floor or post privileges, transaction time extensions, expediting transactions, crossover trades (trading out of assigned functions) and rule infractions;

(C) Service fees charged to members including fees for communications, badges, forms, documents, and reports;

(D) Listing fees and listing maintenance fees charged to companies that wish to be listed and have their securities or products traded on the exchange; and

(E) Participation in the communication network consortium operated collectively by United States exchanges or other markets recognized by the Securities and Exchange Commission, the Commodities Futures Trading Commission, or similar regulatory authorities outside the United States that provides last sale and quote securities information to subscribers or that connects such markets or exchanges for purposes of data transmission;

(2) Exchange members by reason of executing a securities or product transaction on an exchange; provided that this exemption shall apply only to amounts received by exchange members from brokers or dealers registered with the Securities and Exchange Commission, from futures commission merchants, brokers, or associates registered with the Commodities Futures Trading Commission, or from similar individuals or firms registered with similar regulatory authorities outside the United States; and

(3) Exchange members as proceeds from the sale of their exchange memberships.

(b) As used in this section:

"Exchange" means an exchange or board of trade as defined in 15 United States Code section 78c(a)(1) or in 7 United States Code section 7, respectively, which is subject to regulation by the Securities and Exchange Commission or the Commodities Futures Trading Commission or an organization subject to similar regulation under the laws of a jurisdiction outside the United States.

"Exchange member" means an individual or firm that is qualified by an exchange as a member and pays membership dues to an exchange in order to trade securities or products on an exchange.

"Securities" means securities as defined in 15 United States Code section 78c and "products" means contracts of sale of commodities for future delivery, futures contracts, options, calls, puts, and similar rights as defined in 7 United States Code section 2, which securities or products are permitted to be traded on an exchange. [L 1988, c 295, §1; am L 1989, c 118, §§2, 3; am L 1990, c 108, §1; am L 1997, c 107, §5]

§237-24.7 Additional amounts not taxable. In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

(1) Amounts received by the operator of a hotel from the owner of the hotel or from a timeshare association, and amounts received by the suboperator of a hotel from the owner of the hotel, from a timeshare association, or from the operator of the hotel, in amounts equal to and that are disbursed by the operator or suboperator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

"Employee" means employees directly engaged in the day-to-day operation of the hotel and employed by the operator or suboperator.

"Hotel" means an operation as defined in section 445-90 or a timeshare plan as defined in section 514E-1.

"Operator" means any person who, pursuant to a written contract with the owner of a hotel or timeshare association, operates or manages the hotel for the owner or timeshare association.

"Owner" means the fee owner or lessee under a recorded lease of a hotel.

"Suboperator" means any person who, pursuant to a written contract with the operator, operates or

manages the hotel as a subcontractor of the operator.

"Timeshare association" means an "association" as that term is defined in section 514E-1;

(2) Amounts received by the operator of a county transportation system operated under an operating contract with a political subdivision, where the political subdivision is the owner of the county transportation system. As used in this paragraph:

"County transportation system" means a mass transit system of motorized buses providing regularly scheduled transportation within a county.

"Operating contract" or "contract" means a contract to operate and manage a political subdivision's county transportation system, which provides that:

(A) The political subdivision shall exercise substantial control over all aspects of the operator's operation;

(B) The political subdivision controls the development of transit policy, service planning, routes, and fares; and

(C) The operator develops in advance a draft budget in the same format as prescribed for agencies of the political subdivision. The budget must be subject to the same constraints and controls regarding the lawful expenditure of public funds as any public sector agency, and deviations from the budget must be subject to approval by the appropriate political subdivision officials involved in the budgetary process.

"Operator" means any person who, pursuant to an operating contract with a political subdivision, operates or manages a county transportation system.

"Owner" means a political subdivision that owns or is the lessee of all the properties and facilities of the county transportation system (including buses, real estate, parking garages, fuel pumps, maintenance equipment, office supplies, etc.), and that owns all revenues derived therefrom;

(3) Surcharge taxes on rental motor vehicles imposed by chapter 251 and passed on and collected by persons holding certificates of registration under that chapter;

(4) Amounts received by the operator of orchard properties from the owner of the orchard property in amounts equal to and that are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

"Employee" means an employee directly engaged in the day-to-day operations of the orchard properties and employed by the operator.

"Operator" means a producer who, pursuant to a written contract with the owner of the orchard property, operates or manages the orchard property for the owner where the property contains an area sufficient to make the undertaking economically feasible.

"Orchard property" means any real property that is used to raise trees with a production life cycle of fifteen years or more producing fruits or nuts having a normal period of development from the initial planting to the first commercially saleable harvest of not less than three years.

"Owner" means a fee owner or lessee under a recorded lease of orchard property;

(5) Amounts received under property and casualty insurance policies for damage or loss of inventory used in the conduct of a trade or business located within the State or a portion thereof that is declared a natural disaster area by the governor pursuant to section 209-2;

(6) Amounts received as compensation by community organizations, school booster clubs, and nonprofit organizations under a contract with the chief election officer for the provision and compensation of precinct officials and other election-related personnel, services, and activities, pursuant to section 11-5;

(7) Interest received by a person domiciled outside the State from a trust company (as defined in section 412:8-101) acting as payment agent or trustee on behalf of the issuer or payees of an interest bearing instrument or obligation, if the interest would not have been subject to tax under this chapter if paid directly to the person domiciled outside the State without the use of a paying agent or trustee; provided that if the interest would otherwise be taxable under this chapter if paid directly to the person domiciled outside the State, it shall not be exempt solely because of the use of a Hawaii trust company as a paying agent or trustee.

(8) Amounts received by a management company from related entities engaged in the business of selling interstate or foreign common carrier telecommunications services in amounts equal to and that are disbursed by the management company for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this paragraph:

"Employee" means employees directly engaged in the day-to-day operation of related entities engaged in the business of selling interstate or foreign common carrier telecommunications services and employed by the management company.

"Management company" means any person who, pursuant to a written contract with a related entity engaged in the business of selling interstate or foreign common carrier telecommunications services, provides managerial or operational services to that entity.

"Related entities" means:

(A) An affiliated group of corporations within the meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended;

(B) A controlled group of corporations within the meaning of section 1563 (with respect to definitions and special rules) of the federal Internal Revenue Code of 1986, as amended;

(C) Those entities connected through ownership of at least eighty per cent of the total value and at least eighty per cent of the total voting power of each such entity (or combination thereof), including partnerships, associations, trusts, S corporations, nonprofit corporations, limited liability partnerships, or limited liability companies; and

(D) Any group or combination of the entities described in paragraph (C) constituting a unitary business for income tax purposes;

whether or not the entity is located within or without the State or licensed under this chapter; and

(9) Amounts received as grants under section 206M-15. [L 1989, c 351, §1; am L 1991, c 229, §1 and c 263, §10; am L 1992, c 252, §1; am L 1993, c 129, §§2, 4 and c 315, §2; am L 1994, c 230, §§2, 4; am L 1995, c 11, §16, c 71, §4, and c 133, §1; am L 1998, c 214, §2 and c 245, §2; am L 1999, c 165, §2; am L 2001, c 35, §3; am L 2007, c 239, §§2, 4; am L 2009, c 196, §5; am L 2010, c 91, §1; am L 2013, c 163, §1; am L 2023, c 109, §3]

Cross Reference

Tax Information Release No. 2010-08, "Act 91, Session Laws of Hawaii 2010, Relating to General Excise Tax"

§237-24.75 Additional exemptions. In addition to the amounts exempt under section 237-24, this chapter shall not apply to:

(1) Amounts received as a beverage container deposit collected under chapter 342G, part VIII; and

(2) Amounts received by the operator of the Hawaii convention center for reimbursement of costs or advances made pursuant to a contract with the Hawaii tourism authority under section 201B-7 ; and

(3) Amounts received by a professional employer organization that is registered with the department of labor and industrial relations pursuant to chapter 373L, from a client company equal to amounts that are disbursed by the professional employer organization for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick leave, health benefits, and similar employment benefits with respect to covered employees at a client company; provided that this exemption shall not apply to amounts received by a professional employer organization after:

(A) Notification from the department of labor and industrial relations that the professional employer organization has not fulfilled or maintained the registration requirements under this chapter; or

(B) A determination by the department that the professional employer organization has failed to pay any tax withholding for covered employees or any federal or state taxes for which the professional employer organization is responsible.

As used in this paragraph, "professional employer organization", "client company", and "covered employee" shall have the meanings provided in section 373L-1. [L 2002, c 176, §3; am L 2007, c 173, §2 and c 225, §3; am L 2013, c 174, §3.]

Cross Reference

Tax Information Release No. 2024-04. "General Excise Tax on Payments Made by Film Production Companies to Payroll Service Providers"

§237-24.8 Amounts not taxable for financial institutions. (a) In addition to the amounts not taxable under section 237-24, this chapter shall not apply to amounts received by:

(1) Financial institutions from:

(A) Interest, discount, points, commitment fees, loan fees, loan origination charges, and finance charges which are part of the computed annual percentage rate of interest and which are contracted and received for the use of money;

(B) Leasing of personal property;

(C) Fees or charges relating to the administration of deposits;

(D) Gains resulting from changes in foreign currency exchange rates but not including commissions or compensation derived from the purchase or sale of foreign currency or numismatic currency whether legal tender or not;

(E) The servicing and sale of loans contracted for and received by the financial institution; and

(F) Interest received from the investment of deposits received by the financial institution from financial or debt instruments;

(2) Trust companies or trust departments of financial institutions from:

(A) Trust agreements and retirement plans where the trust companies or trust departments are acting as fiduciaries;

(B) Custodial agreements; and

(C) Activities relating to the general servicing of fiduciary/custodial accounts held by the trust companies or trust departments; and

(3) Financial corporations acting as interbank brokers as defined by chapter 241 from brokerage services.

(b) As used in this section:

"Activities relating to the general servicing of fiduciary/custodial accounts" means those activities performed by trust companies that are directly or indirectly performed within the fiduciary/custodial relationship between the trust company or trust department of a financial institution and its client and that are not offered to any person outside of the fiduciary/custodial relationship.

"Annual percentage rate" and "finance charge" have the same meanings as defined in the federal Truth in Lending Act (15 U.S.C. Sections 1605(a) to (c) and 1606).

"Deposit" means:

(1) Money or its equivalent received or held by a financial institution in the usual course of business and for which it has given or is obligated to give credit to:

(A) A commercial (including public deposits), checking, savings, time, or thrift account;

(B) A check or draft drawn against a deposit account and certified by the financial institution;

(C) A letter of credit; or

(D) A traveler's check, on which the financial institution is primarily liable;

(2) Trust funds received or held by a financial institution, whether held in the trust department or held or deposited in any other department of the financial institution;

(3) Money received or held by a financial institution, or the credit given for money or its equivalent received or held by a financial institution in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due the financial institution or others (including funds held as dealers' reserves) or for securities loaned by the financial institution, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held for distribution or purchase of securities, funds held to meet the financial institution's acceptances or letters of credit, and withheld taxes;

(4) Outstanding drafts, cashier's checks, money orders, or other officer's checks issued in the usual course of business for any purpose; or

(5) Money or its equivalent held as a credit balance by a financial institution on behalf of its customer if the financial institution is engaged in soliciting and holding the balances in the regular course of its business.

"Financial institution" means banks, building and loan associations, development companies, financial corporations, financial services loan companies, small business investment companies, financial holding companies, and trust companies all as defined in chapter 241, and mortgage loan originator companies as defined in chapter 454F.

"Leasing of personal property" occurs if:

(1) The lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(2) The property to be leased is acquired specifically for the leasing transaction under consideration, or was acquired specifically for an earlier leasing transaction;

(3) The lease is on a nonoperating basis, i.e., the financial institution may not, directly or indirectly:

(A) Provide for the maintenance, repair, replacement, or servicing of the leased property during the lease term;

(B) Purchase parts and accessories in bulk or for an individual property after the lessee has taken delivery of the property; or

(C) Purchase insurance for the lessee;

(4) At the inception of the lease, the effect of the transaction will yield a return that will compensate the lessor financial institution for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease, from:

(A) Rentals;

(B) Estimated tax benefits (capital goods excise tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect); and

(C) The estimated residual value of the property at the expiration of the initial term of the lease;

(5) The maximum lease term during which the lessor financial institution must recover the lessor's full investment in the property, plus the estimated total cost of financing the property, shall be forty years; and

(6) At the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or leased again on a nonoperating basis as soon as practicable (in no event later than two years from the expiration of the lease), but in no case shall the lessor retain any interest in the property beyond fifty years after the lessor's acquisition of the property. [L 1992, c 106, §4; am L 2011, c 43, §6]

Cross Reference

Tax Information Release No. 99-4. "Application of the Franchise Tax, General Excise Tax, and Income Tax to Mortgage Loan Companies, Including Mortgage Loan Companies Organized as Passthrough Entities and Sole Proprietorships"
Tax Information Release No. 2005-02, "Taxation of Income from Merchant Discount"
Tax Information Release No. 2006-03, "Taxation of Income from Merchant Discount"

§237-24.9 Aircraft service and maintenance facility. (a) This chapter shall not apply to amounts received from the servicing and maintenance of aircraft or from the construction of an aircraft service and maintenance facility in the State.

(b) As used in this section:

"Aircraft" means any craft or artificial contrivance of whatever description engaged in intrastate, interstate, or international scheduled commercial use as defined in chapter 263, that operates with two or more jet engines.

"Aircraft service and maintenance" means all scheduled and unscheduled tasks performed within an aircraft service and maintenance facility for the inspection, modification, maintenance, and repair of aircraft and related components including engines, hydraulic and electrical systems, and all other components which are an integral part of an aircraft.

"Aircraft service and maintenance facility" means a facility for aircraft service and maintenance that is not less than thirty thousand square feet in area, and which may include ancillary space which is integral to the facility, such as parts and inventory warehouse space, tool rooms, and related administrative and employee space.

"Construction of an aircraft service and maintenance facility" means all design, engineering, labor, and material costs associated with the construction of facilities the principle purpose of which is the provision of facilities for aircraft service and maintenance.

"Maintenance" means the upkeep of aircraft engines, hydraulic and electrical systems, and all other components which are an integral part of an aircraft, but does not include refueling, janitorial services or cleaning, restocking of aircraft and passenger supplies, or loading or unloading of cargo and passenger baggage. [L 1997, c 107, §3; am L 1998, c 208, §1]

Cross Reference

Tax Information Release No. 2008-01, "Revocation of Outline, Act 70, SLH 1999 and Act 198, SLH 2000, Revocation of Outline, Act 71, SLH 1999 and Act 198, SLH 2000"

§237-25 Exemptions of sales and gross proceeds of sales to federal government, and credit unions. (a) Any provision of law to the contrary notwithstanding, there shall be exempted from, and excluded from the measures of, the tax imposed by chapter 237 all sales, and the gross proceeds of all sales, of:

(1) Intoxicating liquor, as defined in chapter 281, hereafter sold by any person licensed under chapter 281 to the United States (including any agency or instrumentality of the United States that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or 244D but not including national banks), or to any organization to which that sale is permitted by the proviso of "Class 3" of section 281-31, located on any Army, Navy, or Air Force reservation, but the person making the sale shall nevertheless, within the meaning of chapters 237, 244D, and 281 be deemed to be a licensed seller;

(2) Tobacco products and cigarettes, as defined in chapter 245, sold by any person licensed under the chapter to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or 245 but not including national banks), but the person making the sale shall nevertheless, within the meaning of chapters 237 and 245, be deemed to be a licensed seller;

(3) Other tangible personal property sold by any person licensed under this chapter to the United States (including any agency, instrumentality, or federal credit union thereof but not including national banks), and to any state-chartered credit union, but the person making such sale shall nevertheless, within the meaning of this chapter, be deemed a licensed seller; and

(4) When the amount of property sold by a licensee turns upon the amount of the property sold through a vending machine or similar device to the customer using the device, there shall not be deemed to have occurred any sale covered by an exemption under paragraph (1), (2), or (3).

(b) Nothing in this section shall be deemed to exempt any sales to or by a federal cost-plus contractor, as defined in chapter 237, or the gross proceeds thereof; with respect to all such activities and transactions, taxes shall be levied, returned, computed, and assessed the same as if this section had not been enacted, and in the case of an election made under sections 237-13(2)(F) and 237-13(3)(C)(ii), the tax shall be computed the same as upon a sale to the state government.

(c) Nothing in this section shall be deemed to exempt any person engaging or continuing in a service business or calling from any part of the tax imposed upon the person for such activity, and the person shall not be entitled to deduct any amount for tangible personal property furnished in conjunction therewith even though the person separately bills or otherwise shows the amount of the gross income of the business derived from the furnishing of the property.

(d) The exemption granted by this section shall apply to the seller of products sold in the State as provided in subsection (a) in respect of the privilege of manufacturing or producing, as well as the privilege of selling, and the

value or gross proceeds of sales of the products so sold shall be excluded from the measure of the tax imposed by chapter 237 upon the seller as a manufacturer or producer. [L 1951, c 284, §§1, 2; am L 1953, c 183, §§1, 2; am L 1955, c 214, §1; RL 1955, §117-21.5; am L 1957, c 34, §7; am L Sp 1959 2d, c 1, §16; HRS §237-25; am L 1968, c 7, §2; am L 1971, c 4, §4; am L 1985, c 16, §8; gen ch 1985; am L 1986, c 344, §11; am L 1987, c 239, §6; am L 1989, c 8, §2 and c 149, §1; am L 1993, c 220, §3; am L 1994, c 141, §3 and c 274, §1]

Cross Reference

Tax Information Release No. 22-69, "Sales of Tangible Personal Property to the American National Red Cross"

Tax Information Release No. 80-1, "Federal Credit Unions' Exemption from General Excise Taxes" Superseded by TIR 2005-01

Tax Information Release No. 98-4, "Application of the Transient Accommodations Tax and General Excise Tax to an Operator of Transient Accommodations"

Tax Information Release No. 2000-1, "Imposition of the General Excise Tax on Retailing Activities Under Hawaii Revised Statutes (HRS)§§ 237-16 and 237-13"

Tax Information Release No. 2001-3, "United States Government Credit Cards Issued Under the 'GSA Smart Pay' Program"

Tax Information Release No. 2005-01, "General Excise Tax Exemption For Sales Of Tangible Personal Property To Credit Unions"

Tax Information Release No. 2011-02, "General Excise Taxation of Sales of Tangible Personal Property to the Federal Government and the Grandfathering Rules Under Act 105, SLH 2011"

Attorney General Opinions

Sales of tangible personal property made to Federal Credit Unions are exempt from the state general excise tax. Att. Gen. Op. 65-29.

The Hawaii general excise tax cannot be imposed upon sellers who sell tangible personal property to National Banks. Att. Gen. Op. 66-16.

§237-26 Exemption of certain scientific contracts with the United States. (a) Any provision of law to the contrary notwithstanding, there shall be exempted from the measure of the taxes imposed by chapter 237, all of the gross proceeds derived by a contractor or subcontractor arising from the performance of any scientific work as defined in subsection (b), under a contract or subcontract entered into with the United States (including any agency or instrumentality thereof but not including national banks), and all of the gross proceeds derived from the sale of tangible personal property by a seller of such tangible personal property to such contractor or subcontractor; provided the exemption herein shall apply only to such tangible personal property which is to be affixed to, or to become a physical, integral part of the scientific facility, or which is to be entirely consumed during the performance of the service required by the contract or subcontract.

(b) For purposes of this section, "scientific work" is work involving primarily the research and development for, or the design, manufacture, instrumentation, installation, maintenance, or operation of aerospace, agricultural, astronomical, biomedical, electronic, geophysical, oceanographic, test range, or other scientific facilities. Maintenance or operation, for purposes of this section, shall include housekeeping functions in providing certain nonscientific logistic and support services. [L 1965, c 201, §27; Supp, §117-21.6; HRS §237-26; am L 1970, c 180, §13; am L 1971, c 4, §5; am L 1988, c 163, §1]

Cross Reference

Tax Information Release No. 35-71, "Section 237-26 — Application of the General Excise Tax to Certain `Scientific Contracts' and `Tangible Personal Property' Furnished in Connection Therewith"

Case Notes

Construed as read before 1970 amendment. 57 H. 253, 554 P.2d 238 (1976).

§237-27 Exemption of certain petroleum refiners. (a) As used in this section:

"Petroleum products" means petroleum; any distillate, fraction, or derivative of petroleum; natural gas or its components; gas manufactured from a petroleum product; and any product derived from the gas or from the manufacture thereof, such as benzene, xylene, toluene, acetylene, tars, components of tars, and ammonia.

"Refiner" means any person who, in the State, engages in the business of refining petroleum products and is taxable under this chapter, upon the value or gross proceeds of sales of the petroleum products resultant from the business. A person who is engaged in business as a refiner and also in other business shall be deemed a refiner only in respect of the business that produces the products included in the measure of the tax imposed by this chapter.

"Refining" means:

(1) Any process performed by a refiner that includes a change in the character or properties of a petroleum product through the application of heat; or

(2) The compounding by a refiner of a petroleum product with a product that has been refined by the refiner by the process stated in paragraph (1).

(b) There shall be excluded from the measure of the tax on a refiner such part of the petroleum products resultant from the refiner's business as is to be further refined by another refiner, to the extent that the petroleum products resultant from such further refining will be (or but for this subsection would be) included in the measure of the tax on such other refiner, and where petroleum products are to be used partly for such refining and partly for other purposes,

the proportion used for each purpose shall be determined upon the basis of weight or BTU content. [L 1953, c 274, §3; RL 1955, §117-22; HRS §237-27; am imp L 1984, c 90, §1; gen ch 1985; am L 2018, c 18, §11]

§237-27.1 REPEALED. L 2009, c 11, §25

§237-27.5 Air pollution control facility. (a) As used in this section, "air pollution control facility" shall mean a new identifiable treatment facility, equipment, device, or the like, which is used to abate or control atmospheric pollution or contamination by removing, reducing, or rendering less noxious air contaminants emitted into the atmosphere from a point immediately preceding the point of such removal, reduction, or rendering to the point of discharge of air, meeting emission standards as established by the department of health, excluding air conditioner, fan, or other similar facility for the comfort of persons at a place of business.

(b) Any provision of law to the contrary notwithstanding, and upon receipt of the certification required by subsection (c), there shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter, all of the gross proceeds arising from, and all of the amount of tangible personal property furnished in conjunction with, the construction, reconstruction, erection, operation, use, or maintenance of an air pollution control facility.

(c) Application for the exemption provided by this section shall first be made with the director of health who, if satisfied that the facility meets the pollution emission criteria established by the department of health, shall certify to that fact. A new certificate shall be obtained from the director of health and filed with the director of taxation every five years certifying that the pollution control facility complies with the pollutant emission criteria established by the department of health. [L 1970, c 134, §1; am L 1989, c 14, §15]

§237-27.6 Solid waste processing, disposal, and electric generating facility; certain amounts exempt. (a) Any provisions of the law to the contrary notwithstanding, there shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter all of the amounts enumerated in subsection (b) arising from a transaction involving a sale and leaseback of a solid waste processing, disposal, and electric generating facility entered into by a political subdivision of the State under section 46-19.1 where the facility is owned or under construction by the subdivision before May 10, 1988.

(b) Amounts are exempted or excluded from taxation under this chapter only to the extent that they:

(1) Are received by an operator of a facility under an operating contract with a political subdivision, where the:
  (A) Operator, or its successor, entered into an operating contract prior to May 10, 1988;
  (B) Operator enters into a lease of the facility from the owner at a time that coincides with the time the owner and the political subdivision entering into a sale and leaseback transaction; and
  (C) Amounts are used by the operator to make rental payments to the owner;
(2) Are received as rental payments by the owner of the facility from the operator of the facility;
(3) Do not exceed the payments made by the owner of the facility under the sale and leaseback transaction to the political subdivision; and
(4) In no case exceed debt service costs incurred by the political subdivision for the construction of the facility.

(c) For the purposes of this section:

"Debt service costs" means payments of principal and interest on general obligation bonds issued at any time by a political subdivision for the construction of the facility.

"Sale and leaseback" means a transaction in which a facility is sold by a political subdivision to a private entity for cash, under an installment sale, a financing lease, or similar arrangement, or any combination thereof, where the political subdivision has the right to repurchase the facility at a later date, and where the facility is leased to an operator of the facility.

"Solid waste processing, disposal, and electric generating facility" or "facility" means a facility for the processing and disposal of solid waste or the generation of electric energy, or both, the construction of which has been financed pursuant to section 47-4 and constitutes an undertaking as defined in section 49-1.

"Operator" means a private entity who enters into an agreement or other arrangement with the owner of a solid waste processing, disposal, and electric generating facility for the purpose of operating such facility for a political subdivision of the State.

"Owner" means any person who purchases a solid waste processing, disposal, and electric generating facility under section 46-19.1. [L 1988, c 57, §2; am L 1990, c 34, §6]

Revision Note

Pursuant to §23G-15, in:
(1) Subsections (a) and (b), "May 10, 1988" substituted for "the effective date of this section"; and
(2) Subsection (c), definitions rearranged.

§237-28 REPEALED. L 1987, c 39, §8.

[§237-28.1] Exemption of certain shipbuilding and ship repair business. There shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter all of the gross proceeds arising from shipbuilding and ship repairs rendered to surface vessels federally owned or engaged in interstate or international trade. [L 1971, c 204, §1]

§237-28.2 REPEALED. L 2003, c 135, §12.

§237-29 Exemptions for certified or approved housing projects. (a) All gross income received by any qualified person or firm for the planning, design, financing, construction, sale, or lease in the State of a housing project that has been certified or approved under section 201H-36 shall be exempt from general excise taxes.

(b) All gross income received by a nonprofit or a limited distribution mortgagor for a low- and moderate-income housing project certified or approved under section 201H-36 shall be exempt from general excise taxes.

(c) The director of taxation and the housing and community development corporation of Hawaii shall adopt rules pursuant to chapter 91 for the purpose of this section, including any time limitation for the exemptions. [L 1967, c 140, §§1, 2; HRS §237-29; am L 1969, c 132, §1; am L 1983, c 228, §1; am L 1985, c 77, §1; am L 1987, c 337, §11; am L 1988, c 153, §3; am L 1989, c 237, §2; am L 1990, c 68, §2; am L 1997, c 350, §§14 to 16; am L 2007, c 249, §18]

§237-29.5 Exemption for sales of tangible personal property shipped out of the State. (a) There shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter all of the value or gross proceeds arising from the manufacture, production, or sale of tangible personal property:

(1) Shipped by the manufacturer, producer, or seller to a point outside the State where the property is resold or otherwise consumed or used outside the State; or

(2) The sale of which is exempt under section 237-24.3(2).

(b) For the purposes of this section, the manufacturer, producer, or seller shall take from the purchaser, a certificate, in such form as the department shall prescribe, certifying that the tangible personal property purchased is to be resold or otherwise consumed or used outside the State. Any purchaser who shall furnish such a certificate shall be obligated to pay to the seller, upon demand, if the property purchased is not resold or otherwise consumed or used outside the State, the amount of the additional tax which by reason thereof is imposed upon the seller. [L 1987, c 239, pt of §4; am L 1988, c 173, §1; am L 1993, c 220, §4; am L 1994, c 141, §4]

Cross Reference

Tax Information Release No. 93-4, "Application of Section 237-24.3(1)(C), Hawaii Revised Statutes (HRS)(Formerly Section 237-24(18)(C), HRS)(Note: the reference to section 237-24.3(1)(C) should be to section 237-24.3(2)(C))"

Tax Information Release No. 98-5, "General Excise Tax Exemption for Tangible Personal Property, Including Souvenirs and Gift Items, Shipped Out of the State"

18-237-29.53

§237-29.53 Exemption for contracting or services exported out of State. (a) There shall be exempted from, and excluded from the measure of, taxes imposed by this chapter, all of the value or gross income derived from contracting (as defined under section 237-6) or services performed by a person engaged in a service business or calling in the State for use outside the State where:

(1) The contracting or services are for resale, consumption, or use outside the State; and

(2) The value or gross income derived from the contracting or services performed would otherwise be subject to the tax imposed under this chapter on contracting or services at the highest rate.

For the purposes of this subsection, the seller or person rendering the contracting or services exported and resold, consumed, or used outside the State shall take from the customer, a certificate or an equivalent, in a form the department prescribes, certifying that the contracting or service purchased is to be otherwise resold, consumed, or used outside the State. Any customer who furnishes this certificate or an equivalent shall be obligated to pay the seller or person rendering the contracting or services, upon demand, if the contracting or service purchased is not resold or otherwise consumed or used outside the State, the amount of the additional tax which by reason thereof is imposed upon the seller or person rendering the contracting or service.

(b) There shall be exempted from, and excluded from the measure of, taxes imposed by this chapter, all of the value or gross income derived from contracting (as defined in section 237-6) or services performed by a person engaged in a service business or calling in the State for a purchaser who resells all of the contracting or services for resale, consumption, or use outside the State pursuant to subsection (a). For the purposes of this subsection, the seller or person rendering the contracting or services for a purchaser who resells the contracting or services for resale, consumption, or use outside the State shall take from the purchaser, a certificate or an equivalent, in a form that the department prescribes, certifying that the contracting or services purchased is to be for resale, consumption, or use outside the State pursuant to subsection (a). Any purchaser who furnishes this certificate or an equivalent shall be obligated to pay the seller or person rendering the contracting or services, upon demand, if the contracting or services purchased is not resold in its entirety to a customer of the purchaser who has complied with subsection (a), the amount

of the additional tax which by reason thereof is imposed upon the seller or the person rendering the contracting or service. [L 1999, c 70, §1; am L 2000, c 198, §6]

Cross Reference

Tax Information Release No. 2008-01, "Revocation of Outline, Act 70, SLH 1999 and Act 198, SLH 2000, Revocation of Outline, Act 71, SLH 1999 and Act 198, SLH 2000"

Tax Information Release No. 2009-02, "Exemption for contracting or services exported out of state, HRS section 237-29.53; Imposition of tax on imported services or contracting, HRS section 238-2.3" OBSOLETE

Tax Information Release No. 2018-06, "General Excise Tax Exemption for Contracting and Services Exported Outside the State; Sourcing of Income from Contracting and Services"

[§237-29.55] Exemption for sale of tangible personal property for resale at wholesale. (a) There shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter all of the gross proceeds or gross income arising from the sale of tangible personal property imported to Hawaii from a foreign or domestic source to a licensed taxpayer for subsequent resale for the purpose of wholesale as defined under section 237-4.

(b) The department, by rule, may provide that a seller may take from the purchaser of imported tangible personal property, a certificate, in a form that the department shall prescribe, certifying that the purchaser of the imported tangible property shall resell the imported tangible personal property at wholesale as defined under section 237-4. Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, if the sale in fact is not a sale for the purpose of resale at wholesale, the amount of the additional tax which by reason thereof is imposed upon the seller. The absence of a certificate, unless the sales of the business are exclusively a sale for the purpose of resale at wholesale, in itself, shall give rise to the presumption that the sale is not a sale for the purpose of resale at wholesale. [L 1998, c 247, §1]

Cross Reference

Tax Information Release No. 98-8, "Application of Act 247, Session Laws of Hawaii 1998 (Act 247), Relating to the General Excise Tax Exemption for Tangible Personal Property Imported Into the State for Resale at Wholesale"

[§237-29.57] Exemption for intangible property used outside the State. (a) All of the value or gross proceeds arising from the use of intangible property outside the State shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter.

(b) For the purposes of this section, the seller or licensor shall take from the purchaser a certificate, in a form prescribed by the department, certifying that the intangible property is to be used outside the State. Any purchaser who furnishes the certificate shall be obligated to pay to the seller or licensor, upon demand, the amount of the additional tax that is imposed upon the seller or licensor, if the intangible property is used in this State. [L 2018, c 183, §1]

Note

Section applies to taxable years beginning after December 31, 2018. L 2018, c 183, §7.

§237-29.6 REPEALED. L 1999, c 70, §9.

§237-29.65 REPEALED. L 2007, c 9, §26.

[§237-29.7] Exemption of insurance companies. This chapter shall not apply to the gross income or gross proceeds of insurance companies authorized to do business under chapter 431; except this exemption shall not apply to any gross income or gross proceeds received after December 31, 1991, as rents from investments in real property in this State; provided that gross income or gross proceeds from investments in real property received by insurance companies after December 31, 1991, underwritten contracts entered into before January 1, 1992, that do not provide for the passing on of taxes or tax increases shall not be taxed until the contracts are renegotiated, renewed, or extended. [L 1991, c 286, §1]

Revision Note

"January 1, 1992" substituted for the "effective date of this Act" pursuant to §23G-15.

Case Notes

Management company for foreign insurers authorized to do business in Hawaii was not an "insurance company" exempt from general excise taxes under this section, where, inter alia, company's arrangements with insurers indicated that it was a separate taxable legal entity. 115 H. 180, 166 P.3d 353 (2007).

§237-29.75 REPEALED. L 2007, c 9, §27.

[§237-29.8] Call centers; exemption; engaging in business; definitions. (a) This chapter shall not apply to amounts received from a person operating a call center by a person engaged in business as a telecommunications common carrier for interstate or foreign telecommunications services, including toll-free telecommunications, telecommunications

capabilities for electronic mail, voice, and data telecommunications, computerized telephone support, facsimile, wide area telecommunications services, or computer-to-computer communication.

(b) The establishment of a call center in this State by any person shall not be used by itself by the State to find that any other part of the person's business is engaged in business in this State for the purposes of this chapter. Gross income or gross proceeds received by a call center for customer service and support shall be exempt from the measure of taxes imposed by this chapter.

(c) The department, by rule, may provide that the person providing the telecommunications service may take from the person operating a call center a certificate, in a form that the department shall prescribe, certifying that the amounts received for telecommunications services are for operating a call center. If the certificate is required by rule of the department, the absence of the certificate in itself shall give rise to the presumption that the amounts received from the sale of telecommunications services are not for operating a call center.

(d) As used in this section:

"Call center" means a physical or electronic operation that focuses on providing customer service and support for computer hardware and software companies, manufacturing companies, software service organizations, and telecommunications support services, within an organization in which a managed group of individuals spend most of their time engaging in business by telephone, usually working in a computer-automated environment; provided that the operation shall not include telemarketing or sales.

"Customer service and support" means product support, technical assistance, sales support, phone or computer-based configuration assistance, software upgrade help lines, and traditional help desk services.

"Telecommunications common carrier" means any person that owns, operates, manages, or controls any facility used to furnish telecommunications services for profit to the public, or to classes of users as to be effectively available to the public, engaged in the provision of services, such as voice, data, image, graphics, and video services, that make use of all or part of their transmission facilities, switches, broadcast equipment, signalling, or control devices.

"Telecommunications service" or "telecommunications" means the offering of transmission between or among points specified by a user, of information of the user's choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit of any closed transmission medium.

(e) This section shall not apply to gross proceeds or gross income received after June 30, 2010. [L 2000, c 195, § 2]

RETURNS AND PAYMENTS

18-237-30 **§237-30 Monthly, quarterly, or semiannual return, computation of tax, payment.** (a) The taxes levied hereunder shall be payable in monthly installments on or before the twentieth day of the calendar month following the month in which they accrue. The taxpayer, on or before the twentieth day of the calendar month following the month in which the taxes accrue, shall make out and sign a return of the installment of tax for which the taxpayer is liable for the preceding month and transmit the same, together with a remittance, in the form required by section 237-31, for the amount of the tax, to the department of taxation in the form and manner prescribed by the department.

(b) Notwithstanding subsection (a), the director of taxation, for good cause, may permit a taxpayer to file the taxpayer's return required under this section and make payments thereon:

(1) On a quarterly basis during the calendar or fiscal year, the return and payment to be made on or before the twentieth day of the calendar month after the close of each quarter, to wit: for calendar year taxpayers, on or before April 20, July 20, October 20, and January 20 or, for fiscal year taxpayers, on or before the twentieth day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed $4,000; or

(2) On a semiannual basis during the calendar or fiscal year, the return and payment to be made on or before the twentieth day of the calendar month after the close of each six-month period, to wit: for calendar year taxpayers, on July 20 and January 20 or, for fiscal year taxpayers, on or before the twentieth day of the seventh month following the beginning of the fiscal year and on or before the last day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed $2,000.

The director, for good cause, may permit a taxpayer to make monthly payments based on the taxpayer's estimated quarterly or semiannual liability, provided the taxpayer files a reconciliation return at the end of each quarter or at the end of each six-month period during the calendar or fiscal year, as provided in this section.

(c) If a taxpayer filing the taxpayer's return on a quarterly or semiannual basis, as provided in this section, becomes delinquent in either the filing of the taxpayer's return or the payment of the taxes due thereon, or if the liability

of a taxpayer, who possesses a permit to file the taxpayer's return and to make payments on a semiannual basis exceeds $2,000 in general excise taxes during the calendar year or exceeds $4,000 in general excise taxes during the calendar year if making payments on a quarterly basis, or if the director determines that any such quarterly or semiannual filing of return would unduly jeopardize the proper administration of this chapter, including the assessment or collection of the general excise tax, the director may, at any time, revoke a taxpayer's permit, in which case the taxpayer will then be required to file the taxpayer's return and make payments thereon as herein provided in subsection (a).

(d) Notwithstanding any other law to the contrary, the director may exempt from the requirements of this section a taxpayer whose tax liability under this Chapter does not exceed $100 for the taxable year; provided that the taxpayer complies with the requirements of section 237-33.

(e) The director may adopt and promulgate rules and regulations to carry out the purposes of this section.

(f) Section 232-2 does not apply to a monthly return. [L 1935, c 141, §5; am L 1941, c 265, §3; RL 1945, §5461; am L 1945, c 253, §5; am L 1953, c 161, §5; RL 1955, §117-25; am L 1957, c 34, §9; am L Sp 1959 2d, c 1, §16; am L 1964, c 23, §2; am L 1965, c 177, §1; am L 1967, c 26, §1 and c 37, §1; HRS §237-30; am L 1981, c 139, §1; am imp L 1984, c 90, §1; am L 1985, c 130, §1; gen ch 1985; am L 1993, c 39, §1; am L Sp 2001 3d, c 8, §3; am L 2009, c 196, §4; am L 2021, c 117, §10; am L 2022, c 8, §1]

Note

The 2022 amendment applies to taxable years beginning after December 31, 2022. L 2022, c 8, §3.

Cross Reference

Rules, see chapter 91.
Tax Information Release No. 94-6, "Resale Certificates"

§237-30.5 Collection of rental by third party; filing with department; statement required. (a) Every person authorized under an agreement by the owner of real property located within this State to collect rent on behalf of the owner shall be subject to this section.

(b) Every written rental collection agreement shall have on the first page of the agreement the name, address, social security number, and, if available, the general excise tax number of the owner of the real property being rented, the address of the property being rented, and the following statement that shall be set forth in bold print and in ten-point type size:

"HAWAII GENERAL EXCISE TAXES MUST BE PAID ON THE GROSS RENTS COLLECTED BY ANY PERSON RENTING REAL PROPERTY IN THE STATE OF HAWAII. A COPY OF THE FIRST PAGE OF THIS AGREEMENT, OR OF FEDERAL INTERNAL REVENUE FORM 1099 STATING THE AMOUNT OF RENTS COLLECTED, SHALL BE FILED WITH THE HAWAII DEPARTMENT OF TAXATION."

Every person entering an oral rental collection agreement shall furnish the department of taxation the information required under this subsection and shall give the owner of the property a copy of the notice required by this subsection.

(c) Every person authorized to collect rent for another person shall file a copy of the first page of the rental collection agreement with the department of taxation within thirty days after entering into the agreement, or shall file a copy of federal Internal Revenue form 1099, the property owner's social security number, and, if available, the general excise tax license number of the owner of the property being rented with the department of taxation at the same time that the forms must be filed with the Internal Revenue Service.

(d) Every person authorized under an agreement by the owner of real property located within this State to collect rent on behalf of the owner within ninety days after the effective date of this section shall furnish the department of taxation with the information required in subsection (b) and in the case of federal form 1099 the form for the taxable year 1983. The person also shall notify the owner that the information is being furnished and give the owner a copy of the notice required by subsection(b).

(e) Failure to comply with any provision of this section shall be unlawful. The department of taxation may issue a citation to any person who fails to comply with any provision of this section. A citation issued pursuant to this subsection shall include a monetary fine of no more than $500 per violation. Any fine assessed under this subsection shall be due and payable thirty days after issuance, subject to appeal rights provided under this subsection. Citations may be appealed to the director or the director's designee, and the determination of the director may be appealed to the circuit court pursuant to chapter 91. [L 1983, c 234, §2; am L 2024, c 76, §2]

Cross Reference

Tax Information Release No. 2024-02, "Act 76, Session Laws of Hawaii 2024, Relating to Rent Collection Agreements and Proposed Temporary Administrative Rules"

[§237-30.7] Withholding of tax by persons claiming the motion picture, digital media, and film production income tax credit. (a) Every person making payment to a loan-out company and claiming a tax credit pursuant to section 235-17 shall deduct and withhold an amount equal to the highest rate of tax under this chapter plus any applicable county surcharge for all payments made to the loan-out company for services performed in the State. The amounts withheld shall

be remitted pursuant to subsection (b). The amounts withheld under this section shall be deemed to be a general excise tax withholding for the benefit of the loan-out company performing the service.

(b) Every person subject to subsection (a) shall make a return of the amount withheld and file the return with the department of taxation no later than the twentieth day of the calendar month immediately following the month in which the payment was made to the loan-out company. The taxes withheld shall be remitted with the return. The department of taxation shall prescribe the forms and procedures to administer this section.

(c) All taxes withheld pursuant to this section shall be held in trust by the person withholding for the State. If any person required to withhold and remit taxes under this section fails to withhold or remit the taxes, the person shall be liable for the failure as provided in section 235-64. [L 2022, c 217, §1]

§237-31 Remittances. All remittances of taxes imposed by this chapter shall be made by money, bank draft, check, cashier's check, money order, or certificate of deposit to the office of the department of taxation to which the return was transmitted. The department shall issue its receipts therefor to the taxpayer and shall pay the moneys into the state treasury as a state realization, to be kept and accounted for as provided by law; provided that:

(1) A sum, not to exceed $5,000,000, from all general excise tax revenues realized by the State shall be deposited in the state treasury in each fiscal year to the credit of the compound interest bond reserve fund;

(2) A sum from all general excise tax revenues realized by the State that is equal to one-half of the total amount of funds appropriated or transferred out of the hurricane reserve trust fund under sections 4 and 5 of Act 62, Session Laws of Hawaii 2011, shall be deposited into the hurricane reserve trust fund in fiscal year 2013-2014 and in fiscal year 2014-2015; provided that the deposit required in each fiscal year shall be made by October 1 of that fiscal year; and

(3) Commencing with fiscal year 2018-2019, a sum from all general excise tax revenues realized by the State that represents the difference between the state public employer's annual required contribution for the separate trust fund established under section 87A-42 and the amount of the state public employer's contributions into that trust fund shall be deposited to the credit of the State's annual required contribution into that trust fund in each fiscal year, as provided in section 87A-42. [L 1935, c 141, §12; RL 1945, §5462; RL 1955, §117-26; am L Sp 1959 2d, c 1, §16; HRS §237-31; am L 1981, c 159, §1; am L 1984, c 163, §1; am L 1985, c 239, §1; am L 1989, c 368, §3; am L 1990, c 163, §3; am L 1992, c 209, §§1, 6 as superseded by am L 1993, c 364, §25; am L 1999, c 110, §1 and c 155, §4; am L 2004, c 115, §2; am L 2006, c 304, §§2, 4; am L 2009, c 11, §3; am L 2011, c 62, §8; am L 2013, c 157, §2 and c 268, §9; am L 2021, c 229, §§4, 9]

Cross Reference

Deposits to highway fund, see §248-8.
State educational facilities improvement special fund, see §36-32.

§237-32 Penalties. Penalties and interest shall be added to and become a part of the tax, when and as provided by section 231-39. [L 1935, c 141, pt of §13; am L 1941, c 265, §8; RL 1945, §5463; am L 1945, c 253, §5; am L 1953, c 125, §10; RL 1955, §117-27; HRS §237-32]

Case Notes

Penalties and interest automatically follow nonpayment of taxes. 40 H. 121 (1953), aff'd 216 F.2d 700 (1954).

18-237-33 **§237-33 Annual return, payment of tax.** On or before the twentieth day of the fourth month following the close of the taxable year, each taxpayer shall make a return showing the value of products, gross proceeds of sales or gross income, and compute the amount of tax chargeable against the taxpayer in accordance with this chapter and deduct the amount of monthly payments (as hereinbefore provided), and transmit with the taxpayer's report a remittance in the form required by section 237-31 covering the residue of the tax chargeable against the taxpayer. The return shall be signed by the taxpayer, if made by an individual, or by the president, vice-president, secretary, or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, firm, society, unincorporated association, group, hui, joint adventure, joint stock company, corporation, trust estate, decedent's estate, trust, or other entity, any individual delegated by the entity shall sign the same on behalf of the taxpayer. If for any reason it is not practicable for the individual taxpayer to sign the return, it may be done by any duly authorized agent. The department, for good cause shown, may extend the time for making the return on the application of any taxpayer and grant such reasonable additional time within which to make the same as may, by it, be deemed advisable.

Section 232-2 applies to the annual return, but not to a monthly return. [L 1935, c 141, pt of §6; am L 1941, c 265, §4; am L 1943, c 4; RL 1945, §5464; am L 1945, c 253, §7; RL 1955, §117-28; am L 1957, c 34, §10; am L Sp 1959 2d, c 1, §16; am L 1965, c 75, §1; am L 1967, c 37, §1; HRS §237-33; am L 1980, c 237, §1; am imp L 1984, c 90, §1; gen ch 1985; am L 2021, c 117, §11]

Cross Reference

Tax Information Release No. 92-1, "Extensions of Time for Filing Annual Returns of General Excise and Transient Accommodations Taxes"

Tax Information Release No. 94-6, "Resale Certificates"

[§237-33.5] Federal assessments; adjustments of gross income or gross proceeds of sale; report to the department. (a) Any person required to report to the department by section 235-101(b), also shall report to the department any change, correction, adjustment, or recomputation of gross income or gross proceeds of sale subject to the tax imposed by this chapter. This report shall be made in the form of a return amending the person's gross income or gross proceeds of sale as previously reported on a return filed with the department for the taxable year. If no return has been filed with the department for the taxable year, a return shall be filed and shall take into account any change, correction, adjustment, or recomputation of gross income or gross proceeds of sale.

(b) Any return or amended return required by this section shall be filed with the department within ninety days after the change, correction, adjustment, or recomputation is finally determined or an amended return is filed with the Internal Revenue Service. The return or amended return shall be accompanied by a copy of the document issued by the United States notifying the taxpayer of the change, correction, adjustment, or recomputation.

(c) The statutory period for the assessment of any deficiency or the determination of any refund attributable to the report required by this section shall not expire before the expiration of one year from the date the department is notified by the taxpayer or the Internal Revenue Service, whichever is earlier, of such a report as provided in subsection (a). Before the expiration of this one-year period, the department and the taxpayer may agree, in writing, to the extension of this period. The period so agreed upon may be further extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. [L 1993, c 32, §1]

18-237-34 **§237-34 Filing of returns; disclosure of returns unlawful, penalty; destruction of returns.** (a) All monthly and annual returns shall be transmitted in the form and manner prescribed by the department.

(b) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State, including the auditor or the auditor's agent with regard to tax return information obtained pursuant to section 23-5(a), to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only, the taxpayer, the taxpayer's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

(1) Trustees;
(2) Partners;
(3) Persons named in a board resolution or a one per cent shareholder in the case of a corporate return;
(4) The person authorized to act for a corporation in dissolution;
(5) The shareholder of an S corporation;
(6) The personal representative, trustee, heir, or beneficiary of an estate or trust in the case of the estate's or decedent's return;
(7) The committee, trustee, or guardian of any person in paragraphs (1) through (6) who is incompetent;
(8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) through (7);
(9) Persons duly authorized by the State in connection with their official duties;
(10) Any duly accredited tax official of the United States or of any state or territory;
(11) The Multistate Tax Commission or its authorized representative;
(12) Members of a limited liability company; and
(13) A person contractually obligated to pay the taxes assessed against another when the latter person is under audit by the department.

Any violation of this subsection shall be a class C felony.

(c) The department may destroy the monthly returns filed pursuant to section 237-30, or any of them, upon the expiration of three years after the end of the calendar year in which the taxes so returned accrued. [L 1935, c 141, §6(2); RL 1945, §5465; am L 1945, c 253, §8; RL 1955, §117-29; am L Sp 1959 2d, c 1, §16; am L 1967, c 37, §1; HRS §237-34; am L 1974, c 139, §5; am L 1981, c 170, §1; am L 1984, c 95, §3; am L 1990, c 184, §9; am L 1993, c 5, §2; am L 1997, c 178, §5; am L 2000, c 34, §1; am L 2014, c 136, §5; am L 2021, c 117, §12]

Cross Reference

Tax Information Release No. 82-7, "Confidentiality of Tax Returns and Information Imparted Therein — Net Income Tax and General Excise Tax"

§237-35 Consolidated reports; interrelated business. When any taxpayer is engaged in two or more forms of business activity taxable under this chapter which are interrelated, or which are of like character, the taxpayer shall file a

consolidated return covering all business activities, which are thus interrelated or of like character. [L 1935, c 141, §6(3); RL 1945, §5466; RL 1955, §117-30; HRS §237-35]

ASSESSMENTS, REFUNDS, AND RECORDS

§237-36 Erroneous returns, disallowance of exemption, payment. If any return made is erroneous, or is so deficient as not to disclose the full tax liability, or if the taxpayer, in the taxpayer's return, shall disclaim liability for the tax on any gross income or gross proceeds of sales liable to the tax, or if the taxpayer shall make application under section 237-23 for an exemption to which the taxpayer is not entitled, the department of taxation shall correct the error or assess the proper amount of taxes. If such recomputation results in an additional tax liability, or if the department proposes to assess any gross income or gross proceeds of sales by reason of the disallowance of an exemption claimed in the return or for which application has been filed, the department shall first give notice to the taxpayer of the proposed assessment, and the taxpayer shall thereupon have an opportunity within thirty days to confer with the department. After the expiration of thirty days from the notification the department shall assess the gross income or gross proceeds of sales of the taxpayer or any portion thereof which the department believes has not theretofore been assessed, and shall give notice to the taxpayer of the amount of the tax, and the amount thereof shall be paid within twenty days after the date the notice was mailed, properly addressed to the taxpayer at the taxpayer's last known address or place of business.

No preliminary notice shall be necessary where the amount of the tax is calculated by the department from gross income returned by the taxpayer as subject to the tax (unless the taxpayer shall have claimed that the applicable rate of tax is lower than the rate of tax applied by the department); in such case the tax shall be due and payable on the tenth day after the date the statement was mailed. In a case of disallowance of an exemption for which application was made under section 237-23 the department, before making an assessment, may require the applicant, by demand made upon the applicant by mail or delivery thereof to the address shown in the application, to file information returns as to the applicant's gross income or gross proceeds of sales within such reasonable time as the department may allow, and in the event of failure, neglect, or refusal to comply with the demand, the department shall make an assessment under section 237-38, in lieu of this section. [L 1935, c 141, §7(1); am L 1941, c 265, §5; RL 1945, §5467; am L 1945, c 253, §9; am L 1947, c 111, §10; am L 1953, c 125, pt of §10; RL 1955, §117-31; am L Sp 1959 2d, c 1, §16; HRS §237-36; am imp L 1984, c 90, §1; gen ch 1985]

§237-37 Refunds and credits. If the amount already paid exceeds that which should have been paid on the basis of the tax recomputed as provided in section 237-36, the excess so paid shall be immediately refunded to the taxpayer in the manner provided in section 231-23(c). The taxpayer may, at the taxpayer's election, apply an overpayment credit to taxes subsequently accruing hereunder.

No recourse may be had except under section 40-35 or by appeal for refunds of taxes paid pursuant to an assessment by the director of taxation; provided that if the assessment by the director shall contain clerical errors, transposition of figures, typographical errors, and errors in calculation or if there shall be an illegal or erroneous assessment, the usual refunds procedures shall apply. No refund or overpayment credit may be had under this section in any event unless the original payment of the tax was due to the law having been interpreted or applied in respect of the taxpayer concerned differently than in respect of taxpayers generally. As to all tax payment for which a refund or credit is not authorized by this section (including without prejudice to the generality of the foregoing cases of unconstitutionality) the remedies provided by appeal or under section 40-35 are exclusive. [L 1935, c 141, pt of §7; RL 1945, §5468; am L 1953, c 125, pt of §10; RL 1955, §117-32; am L 1957, c 34, §11(1) and c 152, §1; am L Sp 1959 2d, c 1, §16; am L 1963, c 45, §2; am L 1967, c 37, §1; HRS §237-37; am imp L 1984, c 90, §1; gen ch 1985; am L 2021, c 117, §13]

Revision Note

Section "231-23(c)" substituted for "231-23(d)" pursuant to §23G-15.

Cross Reference

Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"

Case Notes

Exclusive remedy provision construed as applying only where disputed tax has been paid and a refund is being sought. 57 H. 1, 548 P.2d 246 (1976).

§237-38 Failure to make return. If any person fails, neglects, or refuses to make a return, the department of taxation may proceed as it deems best to obtain information on which to base the assessment of the tax. After procuring the information the department shall proceed to assess the tax as provided in section 237-36. The assessment shall be presumed to be correct until and unless, upon an appeal duly taken as provided in this chapter, the contrary shall be clearly proved by the person assessed, and the burden of proof upon such appeal shall be upon the person assessed to disprove the correctness

of the assessment. [L 1935, c 141, §8; am L 1941, c 265, §6; RL 1945, §5469; am L 1953, c 125, pt of §10; RL 1955, §117-33; am L Sp 1959 2d, c 1, §16; HRS §237-38]

§237-39 Audits; procedure, penalties. (a) For the purpose of verification or audit of a return made by the taxpayer, or where there is reasonable ground to believe that any return made is so deficient as not to form the basis of a satisfactory assessment of the tax, or for the purpose of making an assessment where no return has been made, the department of taxation or the Multistate Tax Commission pursuant to chapter 255, or the authorized representative thereof, may examine all account books, bank books, bank statements, records, vouchers, taxpayer's copies of federal tax returns, and any and all other documents and evidence having any relevancy to the determination of the gross income or gross proceeds of sales of any taxpayer as required to be returned under this chapter and may summon or require the attendance of the person by or for whom the return, if any, has been made or whose tax is being assessed, and any employee of the person, and may summon or require the attendance of any person having knowledge in the premises, naming the time and place in the summons, and may require the production of any books, statements, or other evidence open to examination, and may take testimony in reference to any matter relevant to the gross income or gross proceeds of sales of the taxpayer for the period under consideration, with power to require that the person so called and appearing shall be interrogated under oath and to administer the oath.

(b) If the department determines that any gross income or gross proceeds of sales liable to the tax have not been assessed, the department may assess the same as provided in sections 237-36 and 237-38.

(c) Any individual knowingly giving false testimony under oath at any hearing before the department shall be guilty of perjury and shall be punished as provided by law.

(d) Any person refusing or neglecting to obey any summons issued by the department, and any individual appearing and refusing to testify under oath, shall be fined $50 for the first offense and $100 for each succeeding offense. [L 1941, c 265, §7; RL 1945, §5470; RL 1955, §117-34; am L Sp 1959 2d, c 1, §16; HRS §237-39; am L 1974, c 139, §6; am L 2017, c 12, §50]

Cross Reference

Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"

§237-40 Limitation period. (a) General rule. The amount of excise taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of said return, whichever is later, and no proceeding in court without assessment for the collection of any of the taxes shall be begun after the expiration of the period. Where the assessment of the tax imposed by this chapter has been made within the period of limitation applicable thereto, the tax may be collected by levy or by a proceeding in court under chapter 231; provided that the levy is made or the proceeding was begun within fifteen years after the assessment of the tax. For any tax that has been assessed before July 1, 2009, the levy or proceeding shall be barred after June 30, 2024.

Notwithstanding any other provision to the contrary in this section, the limitation on collection after assessment in this section shall be suspended for the period:

(1) The taxpayer agrees to suspend the period;
(2) The assets of the taxpayer are in control or custody of a court in any proceeding before any court of the United States or any state, and for six months thereafter;
(3) An offer in compromise under section 231-3(10) is pending;
(4) During which the taxpayer is outside the State if the period of absence is for a continuous period of at least six months; provided that if at the time of the taxpayer's return to the State the period of limitations on collection after assessment would expire before the expiration of six months from the date of the taxpayer's return, the period shall not expire before the expiration of the six months; and
(5) An appeal of the assessment is pending before the taxation board of review or the tax appeal court, beginning on the date the notice of appeal is filed and concluding on the date a final decision is issued or the case is withdrawn or dismissed.

(b) Exceptions. In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the annual return, the tax may be assessed or levied at any time; provided that the burden of proof with respect to the issues of falsity or fraud and intent to evade tax shall be upon the State.

(c) Extension by agreement. Where, before the expiration of the period prescribed in subsection (a) or (d), both the department of taxation and the taxpayer have consented in writing to the assessment or levy of the tax after the date fixed by subsection (a) or the credit or refund of the tax after the date fixed by subsection (d), the tax may be assessed or levied or the overpayment, if any, may be credited or refunded at any time prior to the expiration of the

period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(d) Refunds. No credit or refund shall be allowed for any tax imposed by this chapter, unless a claim for such credit or refund shall be filed as follows:

(1) If an annual return is timely filed, or is filed within three years after the date prescribed for filing the annual return, then the credit or refund shall be claimed within three years after the date the annual return was filed or the date prescribed for filing the annual return, whichever is later.

(2) If an annual return is not filed, or is filed more than three years after the date prescribed for filing the annual return, a claim for credit or refund shall be filed within:

(A) Three years after the payment of the tax; or

(B) Three years after the date prescribed for the filing of the annual return,

whichever is later.

Paragraphs (1) and (2) are mutually exclusive. The limitation shall not apply to a credit or refund pursuant to an appeal provided for by section 237-42. [L 1943, c 140, §2; RL 1945, §5471; RL 1955, §117-35; am L Sp 1957, c 1, §29; am L Sp 1959 2d, c 1, §16; HRS §237-40; am L 1969, c 274, §3; am L 1971, c 9, §2; am L 1983, c 103, §1; am L 1992, c 104, §1; am L 1993, c 257, §2; am L 2009, c 166, §7; am L 2025, c 118, §2]

Cross Reference

Suspension of limitation period during bankruptcy proceedings, see §231-3.5.

Tax Information Release No. 99-4. "Application of the Franchise Tax, General Excise Tax, and Income Tax to Mortgage Loan Companies, Including Mortgage Loan Companies Organized as Passthrough Entities and Sole Proprietorships"

Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"

Case Notes

No discovery tolling period applies to tax statutes. 69 H. 515, 750 P.2d 81 (1988).

18-237-41 **§237-41 Records to be kept; examination.** Every taxpayer shall keep in the English language within the State, and preserve for a period of three years, suitable records of gross proceeds of sales and gross income, and such other books, records of account, and invoices as may be required by the department of taxation, and all such books, records, and invoices shall be open for examination at any time by the department or the Multistate Tax Commission pursuant to chapter 255, or the authorized representative thereof. [L 1935, c 141, §22; am L 1937, c 202, §2; am L 1943, c 140, §1; RL 1945, §5472; am L 1945, c 253, §10; RL 1955, §117-36; am L Sp 1959 2d, c 1, §16; HRS §237-41; am L 1969, c 274, §4; am L 1974, c 139, §7; am L 1995, c 92, §13]

Cross Reference

Tax Information Release No. 86-3, "Exemption from the General Excise Tax for Amounts Received on Purchases Made With U.S. Department of Agriculture Food Coupons"

Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"

§237-41.5 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.

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:

"Nonprofit organization" means a corporate entity, association, or other duly chartered entity that is registered with the State and is exempt from the application of this chapter pursuant to section 237-23(a)(3), (4), (5), (6), or (7).

"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. [L 2010, c 155, §2, am L 2012, c 219, §2; am L 2013, c 52, §2]

Cross Reference

Tax Information Release No. 2010-05, "Act 155, Session Laws of Hawaii 2010, Relating to General Excise Tax; The General Excise Tax Protection Act"

APPEALS

§237-42 Appeals. Any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114. [L 1935, c 141, §1; am L 1937, c 202, §1; RL 1945, §5473; am L 1953, c 125, pt of §10; RL 1955, §117-37; am L Sp 1957, c 1, §29; HRS §237-42; am L 2000, c 199, §3; am L 2004, c 123, §3]

Cross Reference

Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"

Case Notes

Taxpayer's 42 U.S.C. §1983 claim against validity of Hawaii's general excise tax barred, where state remedies available to taxpayer were "plain, adequate, and complete". 940 F. Supp. 260 (1995).

Prepayment requirement is constitutional. 57 H. 1, 548 P.2d. 246 (1976).

§237-43 Bulk sales; transfers; penalties. (a) In any case of the sale or transfer in bulk of the whole, or a large part of a stock of merchandise and fixtures, or merchandise, or fixtures, or other assets or property of a business, otherwise than in the ordinary course of trade, business, commerce, or sales, the seller shall make a written and verified report of the bulk sale or transfer to the department not later than ten days after the possession, or the control, or the title of the property, or any part thereof, has passed to the purchaser. The report shall contain the name and address of the purchaser, a brief description of the property sold and the purchase price, the date when the sale or transfer is to be or was consummated, and such other facts as the department may require. The purchaser may make the report for the seller.

(b) The purchaser of the property shall withhold payment of the purchase price until the receipt of a certificate from the department to the effect that all taxes, penalties, and interest levied or accrued under title 14 for taxes administered by the department against the seller, or constituting a lien upon the property, have been paid. A certificate shall not be issued while the department investigates (including by audit) whether taxes have been levied or accrued against the seller. The certificate shall show on its face that the department has had notice of the bulk sale or transfer, and shall also show the names of the seller and purchaser, a brief description of the property sold or transferred, and the date of consummation of the sale or transfer, together with such other information as the department shall prescribe.

(c) If the required report of the bulk sale or transfer is not made, or if the taxes, penalties, and interest shall not be paid within twenty days after the sale or transfer, or within such further time as the department may allow, the purchaser shall be personally liable to pay to the State the amount of all taxes, penalties, and interest levied or accrued under title 14 for taxes administered by the department against the seller or constituting a lien upon the property, together with penalties and interest thereafter accruing, not exceeding, however, the amount of the purchase price. The issuance of a certificate in the prescribed form shall be a complete defense to the bulk sale or transfer liability imposed in the preceding sentence, but shall not be a defense to any liability of the purchaser under any other provision of law

for liabilities and obligations. Any purchaser succeeding to the liabilities of the seller under this section shall make a written report thereof upon the next due date for the reporting of gross income taxes.

(d) For purposes of this section:

"Property" means anything that may be the subject of ownership, including every kind of asset, whether real or personal, tangible or intangible, and without limitation, such as land and buildings, goodwill, notes, accounts, and other intangible property. The term "property" shall not include any interest in residential real property.

"Purchase price" means the total fair market value, as of the date of sale or transfer, of all property transferred, whether or not money or property is exchanged therefor.

"Purchaser" means any person who receives property in a bulk sale or transfer, whether or not money or property is exchanged therefor.

"Sale" means the transfer of property for compensation.

"Seller" means any person who sells or transfers any property in a bulk sale or transfer, whether or not money or property is exchanged therefor.

"Transfer" means the sale, conveyance, or distribution by any mode, direct or indirect, absolute or conditional, voluntary or involuntary, of title to or beneficial ownership in property, or interest therein. The term "transfer" does not include a bona fide, arm's length:

(1) Creation, modification, or termination of a lease interest;

(2) Creation, modification, or release of a lien or encumbrance; or

(3) Transfer occurring as a result of the enforcement of a lien.

(e) Failure to make the report required by this section shall be punishable by a fine of not more than $100. Any seller who wilfully fails to make the report required by this section shall, in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(f) The purchaser shall have the purchaser's remedy against the seller for the amount of taxes, penalties, or interest paid by the purchaser.

(g) This section supplements and does not displace any remedies available to the department under the Uniform Fraudulent Transfer Act and the principles of law and equity. [L 1941, c 265, §8; RL 1945, §5476; RL 1955, §117-40; am L Sp 1959 2d, c 1, §16; HRS §237-43; am imp L 1984, c 90, §1; gen ch 1985; am L 1995, c 92, §14 as superseded by c 120, §1; am L 1996, c 132, §§1, 2]

Cross Reference

Tax Information Release No. 91-10, "Bulk Sales Procedures Effective January 1, 1992"
Tax Information Release No. 95-2, "Clarifying the Application of the Bulk Sale or Transfer Law to Secured Transactions"

§237-44 Entertainment business. (a) As used in this section:

"Admission" means the amount paid for admission to any place, including admission by season ticket or subscription, and also includes the amount paid for seats and tables, reserved or otherwise, and other similar accommodations.

"Cabaret" means any roof garden, cabaret, or other similar place furnishing a public performance, by or for any patron or guest who is entitled to be present during any portion of the performance, including any room in any hotel, restaurant, hall, or other public place where music and dancing privileges or any other entertainment are afforded the patrons in connection with the serving or selling of food, refreshment, or merchandise.

"Transient taxpayer" refers to any person subject to the tax imposed by this chapter who has no permanent place of business in the State.

(b) Every person receiving admissions for any circus, carnival, or any other place whatsoever at which a transient taxpayer is engaged in business (whether or not further admissions are charged inside the place, such further admissions, if any, being also subject to this section), shall set aside from the admissions and hold in trust for the State five per cent of the admissions, or such lesser amount as the department of taxation shall approve as sufficient, to guarantee payment of the tax levied by this chapter on the transient taxpayer. The amount so required to be set aside from the admissions shall be deposited with the department promptly upon collection thereof, from time to time, for deposit by it in a special trust fund in the treasury of the State, there to remain until refunded upon voucher of the department, or until applied to the payment of the taxes guaranteed thereby with the consent of the person making the deposit, or until deposited in court pursuant to chapter 655 or the rules of court. The department may bring an action to obtain an adjudication of its right to apply the guarantee fund in payment of taxes and may deposit the fund in court to await the results of the adjudication, or may be sued by an interested person seeking to obtain the adjudication and may be ordered to make such deposit in court, notwithstanding that the department asserts a claim against the fund.

(c) If any person fails to deposit promptly the guarantee fund required by this section, the department may distrain upon the admissions or any bank account or other asset in which the same can be found, for the purpose of obtaining and depositing in the treasury the required guarantee fund.

(d) Whenever a transient taxpayer is engaged in business at anyplace for which admissions are charged, or at any cabaret whether or not admissions are charged, the person engaging the transient taxpayer shall collect from the

transient taxpayer, by withholding or otherwise, the tax levied by this chapter on the transient taxpayer, shall hold the tax in trust for the State, and shall return and pay over the tax to the proper collecting officer of the State in the manner and at the time required by this chapter, for the account of the transient taxpayer. If the person fails to do so, the person shall be liable to pay to the State the amount of the tax levied by this chapter on the transient taxpayer, together with penalties and interest as provided by law. The amount of the liability may be collected from the guarantee fund, if any, or may be assessed against and collected from the person so becoming liable in the same manner as if the tax had been levied upon the person. [L 1951, c 165, §6; am L 1953, c 68, §2; RL 1955, §117-41; am L Sp 1959 2d, c 1, §16; HRS §237-44; am L 1973, c 133, §8; am L 2017, c 12, §51]

§237-45 REPEALED. L 1997, c 352, §22.

§237-46 Collection by suit; injunction. The department of taxation may collect taxes due and unpaid under this chapter, together with all accrued penalties, by action in assumpsit or other appropriate proceedings in the circuit court of the judicial circuit in which the privilege taxed has been exercised. After delinquency shall have continued for sixty days, or if any person lawfully required so to do under this chapter shall fail to apply for and secure a license as provided by this chapter for a period of sixty days after the first date when the person was required under this chapter to secure the same, the department may proceed in the circuit court of the judicial circuit in which the privilege taxed or taxable has been exercised, to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all taxes and penalties and interest due under this chapter, or until such license is secured, or both, as the circumstances of the case may require. [L 1935, c 141, §14; RL 1945, §5478; am L 1951, c 165, §7; RL 1955, §117-43; am L Sp 1959 2d, c 1, §16; HRS §237-46; am imp L 1984, c 90, §1; gen ch 1985; am L 1989, c 6, §5]

Rules of Court

Injunctions, see HRCP rule 65.

§237-47 District judges; concurrent civil jurisdiction in tax collections. Except as otherwise specifically provided by this chapter, the several district judges shall have concurrent jurisdiction with the circuit courts to hear and determine all civil actions at law in assumpsit for the collection and enforcement of collection and payment of all taxes assessed hereunder, irrespective of the amount claimed. [L 1935, c 141, §15; RL 1945, §5479; RL 1955, §117-44; HRS §237-47; am L 1970, c 188, §39]

OFFENSES; PENALTIES

§237-48 REPEALED. L 1995, c 92, §25.

§237-49 Unfair competition; penalty. No taxpayer shall advertise or hold out to the public in any manner, directly or indirectly, that the tax hereby imposed upon the taxpayer is not considered as an element in the price to the purchaser. Any person violating this section shall be fined no more than $1,000 for each offense. [L 1935, c 141, §23; RL 1945, §5482; RL 1955, §117-47; HRS §237-49; am imp L 1984, c 90, §1; gen ch 1985; am L 2024, c 76, §3]