

GENERAL INSTRUCTIONS

1. General Rule. A qualified entity receiving gross income for the planning, design, financing, construction, sale or lease in the State of a housing project which has been certified or approved under section 46-15.1 or 201H-36, HRS, may file a General Excise/Use Tax Exemption For Certified or Approved Housing Projects (Form G-37). A qualified entity shall file a separate Form G-37 for each housing project for which this exemption is approved by the Hawaii Housing Finance and Development Corporation (HHFDC) or any of the respective counties.

A qualified entity importing any property, services, or contracting to be used in a certified or approved housing project may file Form G-37.

The HHFDC or any of the respective counties may certify for exemption from general excise taxes any qualified entity involved with a newly constructed or rehabilitated project development under section 46-15.1 or 201H-36, HRS.

2. When to Prepare Form G-37. Qualified entities shall prepare Form G-37 upon final execution of the contract for construction or moderate or substantial rehabilitation of an eligible housing project and submit Form G-37 with the required supporting documentation (see chapter 15-306, Hawaii Administrative Rules (HAR) for more information) to HHFDC or the respective county for certification. A cumulative list of licensed suppliers and subcontractors is to be submitted by the developer or general contractor with Form G-37. Inclusion of a supplier or subcontractor on this list will not serve to certify the listed supplier or contractor for the exemption. The developer or general contractor of an eligible housing project shall submit Forms G-37 on behalf of all subcontractors, material houses, real estate sales agencies, and other entities involved with the planning, design, financing, construction, or sale of the housing project.

3. Where to File Form G-37. Submit this form to a certifying agency for approval. After certification by HHFDC (677 Queen Street, Suite 300, Honolulu, HI 96813) or the respective county, the certifying agency will file the original copy of Form G-37 with the Oahu Office Audit Branch Chief. A copy will be retained by the governmental agency certifying or approving the housing project, and a copy will also be given to the qualified entity for its records.

4. Exemption from the General Excise Tax. The exemption shall be claimed on the general excise tax return under column "b" and in Part I on Schedule GE (Form G-45/G-49), Schedule of Exemptions and Deductions, attached to the tax return. To this extent, section 237-29, HRS, provides:

- (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 Hawaii housing finance and development corporation shall adopt rules pursuant to chapter 91 for the purpose of

this section, including any time limitation for the exemptions.

5. Contract vs. GET Exemption Amounts. Enter the total contract amount in the space provided. Enter in the space provided for "GET/Use Tax exemption amount," the amount of the total contract which is qualified under section 237-29, HRS, or 238-3(j), HRS, and chapter 15-306, HAR. For example, equipment or tools that are purchased by the contractor for use during the contract then retained by the contractor as the contractor's assets do not qualify as exempt for general excise tax purposes. Section 15-306-2, HAR defines "allowable construction costs" to mean:

[E]xpenses incurred by a contractor, for contracting, services and materials which are to be incorporated (in such a form as to be perceptible to the senses) into, or used completely by the contractor in, the development and construction of real property improvements and fixtures for a newly constructed, or moderately or substantially rehabilitated eligible housing project that are associated with the residential portion of the project, or that are incidental or de minimis nonresidential uses within the project.

If the full exemption amount is not used on the exempt project, the exemption is limited to the amount actually used on the project.

6. Exclusion from the Use Tax. The use tax is meant to complement the general excise tax. The use tax is an excise tax on the use in Hawaii of imported tangible personal property, services, or contracting purchased from one who is not licensed to do business in Hawaii.

The use of any property, services, or contracting related to the certified or approved housing project is not subject to the use tax. The exemption applies to the tangible personal property, services, or contracting purchased from an unlicensed seller for a qualified project. If the full exemption amount is not used on the exempt project, the exemption is limited to the amount actually used on the project.

If the qualified entity is importing any property, services, or contracting for use in the certified or approved housing project, the qualified entity must complete Schedule A, List of Unlicensed Suppliers and Subcontractors. If a business on this list is determined by the Department of Taxation to be subject to general excise tax on any part of the purchase listed by the qualified entity, the unlicensed seller may use a copy of this Schedule A as evidence of exemption certification of the sale to the qualified entity of tangible personal property, services, or contracting qualifying for the exemption under sections 237-29 and 238-3(j), HRS. This deemed certification is subject to verification by the Department of Taxation. The qualified entity may prepare and submit a separate Schedule A for each unlicensed supplier or subcontractor, if the entity anticipates providing a copy of the certification to the unlicensed seller and doesn't want to disclose its purchases from other sellers.

7. Failure to File Form G-37. The certified Form G-37 must be first filed with the Oahu Office Audit Branch Chief, otherwise, any amount claimed on the general excise tax return as an exemption under section 237-29, HRS, shall be disallowed.

8. Section References. The pertinent parts of sections 46-15.1 and 201H-36, HRS, referred to above are as follows:

§46-15.1 Housing; county powers. (a) Any law to the contrary notwithstanding, any county shall have and may exercise the same powers, subject to applicable limitations, as those granted the Hawaii housing finance and development corporation pursuant to chapter 201H insofar as those powers may be reasonably construed to be exercisable by a county for the purpose of developing, constructing, and providing low-and moderate-income housing; . . . provided further that county projects shall be granted an exemption from general excise or receipts taxes in the same manner as projects of the Hawaii housing finance and development corporation, pursuant to section 201H-36;

§201H-36 Exemption from general excise taxes. (a) In accordance with section 237-29, the corporation may approve and certify for exemption from general excise taxes any qualified person or firm involved with a newly constructed, or moderately or substantially rehabilitated project:

1. Developed under this part;
2. Developed under a government assistance program approved by the corporation, including, but not limited to, the United States Department of Agriculture 502 program and Federal Housing Administration 235 program;
3. Developed under the sponsorship of a private nonprofit organization providing home rehabilitation or new homes for qualified families in need of decent, low-cost housing; or
4. Developed by a qualified person or firm to provide affordable rental housing where at least fifty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income as determined by the United States Department of Housing and Urban Development, of which at least twenty per cent of the available units are for households with incomes at or below sixty per cent of the area median family income as determined by the United States Department of Housing and Urban Development.

(b) To obtain certification for exemption under this section, rental housing projects shall, unless exempted by the corporation, enter into a regulatory agreement with the corporation to ensure the project's continued compliance with the applicable eligibility requirements set forth in subsection (a), as follows:

1. For moderate rehabilitation projects, a minimum term of five years as specified in a regulatory agreement;
2. For substantial rehabilitation projects, a minimum term of ten years as specified in a regulatory agreement, or;
3. For new construction projects, a minimum term of thirty years from the date of issuance of the certificate of occupancy.

(c) All claims for exemption under this section shall be filed with and certified by the corporation and forwarded to the department of taxation. Any claim for exemption that is filed and approved, shall not be considered a subsidy for the purpose of this part.

9. Changes to previously filed Form G-37s. If your contract for work on a qualified project experiences substantial changes, you must file a revised, or amended, Form G-37 with the agency that certified your original submission. This revised Form G-37 must include the full amounts of the contract. A revised Schedule A must also be submitted, if applicable. "Substantial change" means that the change is more than 20% of the original contract amount or the change is more than \$200,000.