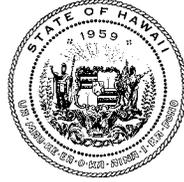


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TAX INFORMATION RELEASE NO. 2011-04

RE: General Excise Tax Reporting Requirements for Nonprofit Organizations

The purpose of this Tax Information Release (TIR) is to announce that most nonprofit organizations are not required to file Schedule GE-1¹, "Survey of General Excise/Use Tax Exemptions and Deductions" and to clarify the general excise tax licensing and reporting requirements for nonprofit organizations generally and for purposes of Hawaii Revised Statutes ("HRS") section 237-9.3.

I. Information Reporting Required by Act 105 on Schedule GE-1

This TIR serves as the official pronouncement that Schedule GE-1 will not be required for most nonprofit organizations who have filed a Form G-6, "Application for Exemption from the General Excise Tax," or Form G-6S, "Application for Exemption from the General Excise Tax (Short Form)," and have been granted an exemption from the general excise tax from the Department of Taxation (the "Department").¹

Section 2 of Act 105, Session Laws of Hawaii ("SLH") 2011, ("Act 105") directed the Department of Taxation to

require information reporting on all exclusions or exemptions of all amounts, persons, or transactions from this chapter, except for the following:

- (1) Amounts received that are exempt under section 237-24(1) through (7); and
- (2) Any other amounts, persons, or transactions as determined by the director to be in the best interest of tax administration and made by official pronouncement.

¹ A small group of nonprofit organizations with unrelated trade or business income who have claimed general excise tax exemptions or deductions will be required to file the Schedule GE-1.

See Department of Taxation Announcement 2011-26 for a discussion of these information reporting requirements.

A. Nonprofit Organizations Not Required to file Schedule GE-1

The director has determined that, in the best interest of tax administration, nonprofit organizations, who have filed a Form G-6 or Form G-6S and received a letter from the Department that the nonprofit organization qualifies for exemption from general excise tax, will not be required to provide Act 105 information reporting on general excise and use tax exemptions and deductions actually claimed, unless the nonprofit organization has unrelated trade or business income and claimed general excise tax exemptions or deductions. Therefore, most nonprofit organizations, who have been granted an exemption from general excise taxation from the Department after filing Form G-6 or Form G-6S, will not be required to file the Schedule GE-1.

B. Nonprofit Organizations Required to File Schedule GE-1

Nonprofit organizations will be required to file the Schedule GE-1, if the nonprofit organization has unrelated trade or business income and claims general excise tax exemptions or deductions with respect to that income.

II. Denial of General Excise Tax Benefits

Under section 237-9.3, HRS, any nonprofit organization who is required to obtain a general excise tax license and fails to do so or who has a license and fails to file Form G-49 within 12 months of the prescribed due date may be denied general excise tax benefits, such as exemptions, deductions, or lower rates, unless the organization qualifies for the safe harbor protection provided in TIR No. 2010-05, as discussed below.² Section 237-9.3, HRS, applies to gross income or gross proceeds received on or after July 1, 2010.

III. Who Must Obtain a General Excise Tax License

Any nonprofit organization, who has income that is subject to the general excise tax, including fundraising income, must obtain a general excise tax license. A general excise tax license is obtained by filing a Form BB-1, "State of Hawaii Basic Business Application." If a nonprofit organization filed a Form G-6 or Form G-6S and was assigned a Hawaii tax identification number, the nonprofit organization still needs to file a Form BB-1 to obtain a general excise tax license if the organization has income that is subject to the general excise tax, including fundraising income.

Nonprofit organizations that file federal Form 990-N and whose only source of income is donations (see part IV(A) below) and/or exempt function or exempt purpose income (see part IV(C)(1) below), are not required to obtain a general excise tax license.

² In addition, the director may waive the denial of the general excise tax benefit, if the failure to comply is due to reasonable cause and not the willful neglect of the taxpayer. HRS Section 237-9.3(c).

Nonprofit organizations that file federal Form 990 or Form 990-EZ are required to obtain a general excise tax license. Any nonprofit organization that is required to obtain a general excise tax license and fails to do so may be penalized under section 237-9.3, HRS, unless the organization qualifies for safe harbor protection provided in Tax TIR 2010-05, as discussed below.²

IV. Form G-45 and G-49 Reporting and Filing for Nonprofit Organizations

Nonprofit organizations have many different types of income. How to report these different types of income and associated exemptions on the Form G-45, "Periodic General Excise/Use Tax Return," and Form G-49, "Annual Return and Reconciliation of General Excise/Use Tax Return," may not be clear to many nonprofit organizations. In addition, any nonprofit organization that fails to file Form G-49 within 12 months of the prescribed due date may be penalized under section 237-9.3, HRS, unless the organization qualifies for safe harbor protection provided in TIR 2010-05, as discussed below. Therefore, nonprofit organizations must carefully consider their reporting requirements.

In general, the main types of income received by a nonprofit organization are (1) contributions, donations, gifts, and bequests; (2) dues; (3) income resulting from the nonprofit organization's exempt function or purpose; and (4) fundraising income. The following discusses how each of these types of income are to be reported on Form G-45 and Form G-49.

A. Contributions, Donations, Gifts and Bequests

Section 237-24(4), HRS exempts from the general excise tax amounts received as gifts or bequests. Contributions and donations to a nonprofit organization would generally fall into this category. Please see Tax Facts 99-4, "Parent-Teacher Organizations and Other School-Related Organizations," and Tax Facts 98-3, "Tax Issues for Nonprofit Organizations," for a discussion of what constitutes a donation that is not subject to general excise tax.

The general excise tax exemption for contributions, donations, gifts, and bequests under section 237-24(4) will not be denied under HRS section 237-9.3 (see safe harbor #6 in TIR 2010-05). Do not report contributions, donations, gifts, or bequests on Form G-45 or Form G-49. See "General Instructions for Filing the General/Excise/Use Tax Returns" page 20.

B. Dues

In general, membership dues are not subject to general excise tax and will be treated like contributions, donations, gifts, and bequests. See Tax Facts 99-4, Q&A 35. Therefore, do not report membership dues on Form G-45 or Form G-49.

C. Exempt Function or Exempt Purpose Income

Section 237-23(a)(3) through (6) of the HRS, exempts from general excise tax certain nonprofit organizations provided that (1) the organization has filed Form G-6 or Form G-6S with

the Department and been granted an exemption from general excise tax; (2) no private inurement to any private stockholder or individual exists; and (3) the exemption only applies to income from the exempt activities of the organization 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 ..." the organization. HRS Section 237-23(b).

1. Nonprofits Who Are Exempt From Filing Federal Form 990 & 990-EZ

For purposes of HRS section 237-9.3, only certain nonprofit organizations will be in jeopardy of losing the tax exemption provided in HRS section 237-23(a)(3) through (6), if the nonprofit organization fails to obtain a general excise tax license or fails to file Form G-49 within 12 months of the prescribed due date. Pursuant to TIR 2010-05, a nonprofit organization that is exempt from filing federal Form 990, "Return of Organization Exempt from Income Tax," or Form 990-EZ, "Short Form – Return of Organization Exempt from Income Tax," will not be subject to HRS section 237-9.3. Therefore, nonprofit organizations that are only required to file the Form 990-N, "Electronic Notice (*e*-Postcard) for Tax-Exempt Organizations not Required to File Form 990 or 990-EZ," are not subject to section 237-9.3.³ Accordingly, a nonprofit organization that does not file a Form 990 or Form 990-EZ, is an organization described under HRS section 237-23(a)(3) through (5), and only has income that meets the requirements under HRS section 237-23(b)(1) through (3) for exemption ("exempt function income"), or donations exempt under section 237-24(4), or a combination of exempt function income and donations, does not have to obtain a general excise tax license or file a Form G-45 or Form G-49.⁴ Any nonprofit organization that does not have to file Form 990 or Form 990-EZ but has income that is subject to general excise tax, in addition to income that is exempt under section 237-23(b), is required to obtain a general excise tax license and must file a Form G-45 and Form G-49.

2. Nonprofits Who Are Required to File Federal Form 990 or 990-EZ

However, a nonprofit organization that must file a Form 990 or Form 990-EZ and qualifies for the exemption under HRS section 237-23(a)(3) through (5) must obtain a general excise tax license and file Form G-45 and Form G-49. Gross receipts that qualify for the exemption provided in section 237-23(a)(3) through (5) and 237-23(b)(1) through (3) are reported as gross income in column (a) of Form G-45 and Form G-49 and the exemption is claimed in column (b) of Form G-45 and Form G-49. In addition, Schedule GE must be completed.

³ For the 2010 tax year, nonprofit organizations with gross receipts of \$200,000 or more or total assets of \$500,000 or more must file Form 990. Nonprofit organizations with gross receipts of less than \$200,000 and total assets of less than \$500,000 are required to file Form 990 or Form 990-EZ. Nonprofit organizations with gross receipts normally less than \$50,000 are required to file Form 990-N. In addition, certain types of organizations are not required to file Form 990 or Form 990-EZ, such as churches and section 501(c)(1) organizations. Please see the instructions to Form 990 and Form 990-EZ for a more detailed explanation of who must file Form 990 and Form 990-EZ.

⁴ However, if no Form G-49 is filed for the taxable year, then the statute of limitations prohibiting the Department from assessing tax on unreported or underreported income does not commence. See HRS section 237-40.

D. Fundraising Income

All nonprofit organizations that receive fundraising income are subject to general excise tax on that income and are required to obtain a general excise tax license and must file a Form G-45 and Form G-49 to report that income. See Tax Facts 99-4 and 98-3 for a discussion of what constitutes taxable fundraising income. For example, a little league baseball team with annual gross receipts of \$5,000 and no assets submitted a Form G-6 and received a letter from the Department approving the team's exemption under section 237-23(a)(4). The team holds a car wash to raise funds for a trip to attend a baseball tournament in California. The car wash generates \$750.00 in gross receipts. The team must obtain a general excise tax license and file a Form G-45 and Form G-49 and pay general excise tax on the \$750.00 of gross receipts from the car wash.

V. Conclusion

In general, nonprofit organizations, who have filed Form G-6 or Form G-6S and received a letter from the Department that the nonprofit organization qualifies for exemption from general excise tax, are excluded from the Act 105 information reporting requirements and are not required to file Schedule GE-1. However, any nonprofit organization with unrelated trade or business income who has claimed general excise tax exemptions or deductions will be required to file the Schedule GE-1. Nonprofit organizations must analyze the types of income received to determine their general excise tax reporting requirements for Forms G-45 and Form G-49.

The chart below summarizes the conclusions set forth in this tax information release.

Federal Form Filed	Type of income	Can GET exemption be denied under HRS §237-9.3?	GET license required?	Reportable for GET purposes?	Sch GE-1 Survey required?
990-N	Donations only	No (SH 5, 6)*	No	No	No
	Exempt function income	No (SH 5)*	No	No	No
	Fundraising	Taxable activity	Yes	Yes	No
	Unrelated trade or business income	Taxable activity with exemption under another HRS section	Yes	Yes	Yes
990 or 990-EZ	Donations only	No (SH 6)*	Yes	No	No
	Exempt function income	Yes	Yes	Yes	No ¹
	Fundraising	Taxable activity	Yes	Yes	No ¹
	Unrelated trade or business income	Taxable activity with exemption under another HRS section	Yes	Yes	Yes

* See safe harbor protection in section C of Tax Information Release No. 2010-05.

VI. Additional Considerations

In addition, businesses are reminded that the general excise tax exemption provided to nonprofit organizations applies to the nonprofit organization's gross receipts. In general, businesses may pass on the general excise tax to nonprofit organizations and the nonprofit organization should be treated like any other purchaser. For example, if a nonprofit organization purchases office supplies at an office supply store, the office supply store is liable for the general excise tax on the sale of the office supplies to the nonprofit organization and the office supply store may pass on the general excise tax on the sale of the office supplies to the nonprofit organization.

For more information contact the Technical Section at (808)587-1577 or e-mail at Tax.Technical.Section@hawaii.gov.



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HRS Sections Explained: Sections 237-9.3 and 237-23
New Section under Chapter 237 created by Act 105, SLH 2011