

LINDA LINGLE
GOVERNOR

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STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

STANLEY SHIRAKI
ACTING DIRECTOR OF TAXATION

RONALD B. RANDALL
ACTING DEPUTY DIRECTOR

July 29, 2010

LETTER RULING NO. 2010-14

[redacted text]

[redacted text]

[redacted text]

Re: General excise tax rate and exemptions for corporations all of whose outstanding shares are owned by individuals who are blind, deaf, or totally disabled.

Dear [redacted text]:

This letter supersedes the letter the Department sent you dated June 23, 2010

[redacted text] (the "Taxpayer") has requested a ruling on the proper treatment under the general excise ("GE") tax law of its gross proceeds.

FACTS

You represent the following:

Taxpayer is a C corporation incorporated in the state of [redacted text] and registered and licensed to do business in Hawaii since [redacted text]. Taxpayer's Hawaii operations are [redacted text].

One hundred per cent of Taxpayer's shares are owned by [redacted text] ("Shareholder"), a person who is permanently and totally disabled. Shareholder has a physician's certification as well as a letter of approval of disability exemption from the Department of Taxation, both of which were provided to the Department.

RULING REQUESTED

Taxpayer requests a ruling that (1) its first \$2,000 of gross income is exempt from GE tax under Hawaii Revised Statutes section 237-24(13), and (2) that the remainder of its gross income is subject to the 0.5% rate under section 237-17.

SHORT ANSWER

Based upon the representations, Taxpayer's first \$2,000 of gross income is exempt from

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GE tax and the remainder of its gross income is subject to GE tax at the 0.5% rate, so long as Shareholder's earned income is \$30,000 or less.

LAW & ANALYSIS

Whether Taxpayer's Sole Shareholder is a Totally Disabled Person

HRS § 235-1 defines "person totally disabled" as "a person who is totally and permanently disabled, either physically or mentally, which results in the person's inability to engage in any substantial gainful business or occupation."

According to Hawaii Administrative Rules section 18-235-1.14(b): "It shall be presumed that an individual whose earned income is greater than \$30,000 for the taxable year is engaged in a substantial gainful business or occupation."

HAR § 18-235-1.14(d) states:

For purposes of this section, earned income includes wages, salaries, tips, business interest income, other employment compensation, and net earnings from self-employment for the taxable year. Earned income does not include interest, dividends, capital gains, pensions, or deferred compensation.

Based upon the representations and assuming Shareholder's earned income is less than \$30,000, Taxpayer's sole shareholder is a totally disabled person. Therefore, Taxpayer is a corporation all of whose outstanding shares are owned by an individual who is totally disabled.

However, if the earned income of Shareholder exceeded \$30,000 in any given year (if an audit were to show, for example, that Taxpayer had paid the personal expenses of Shareholder or other facts which might lead to an adjustment of Shareholder's earned income), then Shareholder would no longer qualify as a totally disabled person in that year, and Taxpayer, in that year, would no longer qualify as a corporation all of whose outstanding shares are owned by an individual who is totally disabled.

Exemption under HRS § 237-24(13)

HRS § 237-24(13) exempts from general excise tax:

An amount up to, but not in excess of, \$2,000 a year of gross income received by ... a corporation all of whose outstanding shares are owned by an individual or individuals who are blind, deaf, or totally disabled[.]

Based upon the representations, Taxpayer is a corporation all of whose outstanding shares are owned by an individual who is totally disabled, as discussed above. Taxpayer represents that Shareholder is its sole shareholder. Taxpayer also represents that Shareholder is a totally disabled person, and has provided a physician's certificate and letter of approval of disability exemption for Shareholder.

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Therefore, based on the representations, Taxpayer's first \$2,000 of gross income per year is exempt from GE tax under HRS § 237-24(13), provided Shareholder's earned income is \$30,000 or less.

Reduced Rate under HRS § 237-17

HRS § 237-17 states:

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 ... corporations all of whose outstanding shares are owned by individuals who 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.

Again, based upon the representations, Taxpayer is a corporation all of whose outstanding shares are owned by an individual who is totally disabled. Therefore, based upon those representations, Taxpayer's gross proceeds are subject to the GE tax at the one-half of one per cent rate, provided Shareholder's earned income is \$30,000 or less.

This ruling is applicable only to Taxpayer. It may not be used or cited as precedent by any other taxpayer, and is based on our understanding of the facts that you have represented. If it is later determined that our understanding of these facts is not correct, the facts are incomplete, or the facts later change in any material respect, the conclusion in this letter will be modified accordingly. This ruling also may be subject to change due to future amendments to laws, rules, or official Department positions.

If you have any further questions regarding this matter, please call me at 808-587-5334. Additional information on Hawaii's taxes is available at the Department's website at <http://www.hawaii.gov/tax>.

Sincerely,

/s/ Jacob L. Herlitz

Jacob L. Herlitz
Administrative Rules Specialist