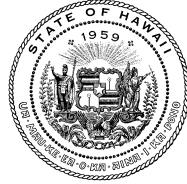


NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



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FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

September 19, 2012

LETTER RULING 2012-14

[Redacted Text]
[Redacted Text]
[Redacted Text]
[Redacted Text]

Re: General Excise Tax Exemptions and Fraternal Benefit Societies

Dear [Redacted Text]:

By letter dated March 15, 2012, [Redacted Text] (the "Taxpayer") requested a ruling from the State of Hawaii Department of Taxation (the "Department") regarding its general excise tax ("GET") exemptions under sections 432:2-503 and 237-23, Hawaii Revised Statutes ("HRS").

FACTS REPRESENTED BY THE TAXPAYER

Taxpayer is one of the world's [Redacted Text] fraternal benefit societies with [Redacted Text] members. Taxpayer is international in scope with its members located in the [Redacted Text]. Taxpayer's members are organized into [Redacted Text] Branches or lodges across the United States. [Redacted Text]. [Redacted Text]. Taxpayer's headquarters are located in [Redacted Text].

Taxpayer is a "fraternal benefit society" within the meaning of Internal Revenue Code ("IRC") section 501(c)(8), and thus, is exempt from federal income tax under section 501(a), IRC. Taxpayer has been licensed to carry on business as a fraternal benefit society since [Redacted Text]. Taxpayer has annual gross receipts of [Redacted Text] or more and total assets of [Redacted Text] or more. Accordingly, as required under the federal tax laws, Taxpayer annually files federal Form 990, *Return of Organization Exempt from Income Tax*.

Taxpayer is also a "fraternal benefit society" as defined under Hawaii's insurance laws, section 432:2-104, HRS and is duly licensed under section 432:2-603, HRS to transact business in the State. Accordingly, Taxpayer is authorized to provide to its members the benefits described in section 432:2-401, HRS, including death, annuity, disability, hospital, medical and nursing benefits. Taxpayer's U.S. insurance Branch, as required under federal law, uses [Redacted Text] as its State of Entry and is supervised by the [Redacted Text] Department of Insurance. Taxpayer does not maintain an office in Hawaii.

Taxpayer provides life insurance and related products to its members. It utilizes the proceeds from the sale of these products to make direct financial contributions to charitable organizations throughout the State and to support its individual members' volunteer activities. For example, through its approximately ~~[Redacted Text]~~ Hawaii members, Taxpayer annually provides financial support to ~~[Redacted Text]~~, and thousands of volunteer hours of their time in supporting ~~[Redacted Text]~~ events and its community activities in the state of Hawaii.

LAW AND ANALYSIS

I. Is Taxpayer, a fraternal benefit society as defined under section 432:2-104, HRS, and duly licensed under section 432:2-603, HRS, exempt from every state, county, and municipal tax, including Hawaii GET under section 432:2-503, HRS?

Hawaii Revised Statutes section 432:2-503 states, “[e]very society organized and operating or licensed under this article shall be, from the time of such organization, exempt from every state, county, and municipal tax, except real property taxes and unemployment compensation taxes.” This exception does not exempt the association or society from liability to withhold such taxes payable by its employees and pay the same to the proper collection officers and does not exempt activities with the primary purpose of producing income from GET.¹

Taxpayer, by its own representation, is a fraternal benefit society as defined under section 432:2-104, HRS, and is duly licensed under section 432:2-603, HRS. This letter ruling does not address the validity of this license or the qualification of the Taxpayer. As a licensed society under section 432:2-603, HRS, Taxpayer is exempt from every state, county, and municipal tax. However, Taxpayer is not exempt from real property tax, unemployment compensation taxes, collection and payment of employment related taxes, and from GET imposed on activities with the primary purpose of producing income.

II. In order to be GET exempt, must Taxpayer also satisfy the exemption requirements applicable to a fraternal benefit society under section 237-23(b), (c), and (d), HRS?

The GET exemption under section 432:2-503, HRS, and section 237-23, HRS, are substantively independent from one another. Because Taxpayer is claiming an exemption under section 432:2-503, HRS, Taxpayer does not need to satisfy the requirements of sections 237-23(b)(2) and (3), HRS, in order to be exempt from GET.

III. Will Taxpayer forfeit its GET exemption under section 432:2-503, HRS, for failure to comply with section 237-9.3, HRS?

Act 155, Session Laws of Hawaii 2010, known as the GET Protection Act, added two new sections to chapter 237 of the HRS. The first new section is codified in section 237-9.3, HRS, and requires taxpayers to obtain a license to engage in and conduct business as required by section 237-9, HRS, and to file annual GET reconciliation tax returns. The penalty for noncompliance with section 237-9.3, HRS, is the loss of entitlement to GET benefits under

¹ § 432:2-503, HRS

chapter 237, HRS.²

Because Taxpayer is claiming a GET exemption under section 432:2-503, HRS, and not under chapter 237, HRS, Taxpayer's GET benefit will not be denied as a result of noncompliance with section 237-9.3, HRS.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayers and accompanied by penalty of perjury statements executed by appropriate parties. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

Except for the specific ruling above, we express or imply no opinion concerning the tax consequences of the facts of this case under any other provision.

The Taxpayer has reviewed the redacted version of this ruling and agreed that it will be available for public inspection and copying.

If you have any further questions regarding this matter, please call me at **[Redacted Text]**.

Sincerely,

TED S. SHIRAISHI
Administrative Rules Specialist

² § 237-9.3(a), HRS