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GOVERNOR

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September 19, 2012

**LETTER RULING 2012-15**

[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 section 432:2-503, Hawaii Revised Statutes ("HRS") and section 237-23, HRS.

**FACTS REPRESENTED BY THE TAXPAYER**

Taxpayer is the [Redacted Text] fraternal service organization in the world with more than [Redacted Text] members. [Redacted Text]. Taxpayer's office is located in [Redacted Text] and does not maintain an office in Hawaii. Taxpayer operates on a calendar year and uses cash basis method of accounting.

Taxpayer is a "fraternal benefit society" within the meaning of Internal Revenue Code ("IRC") section 501(c)(8), and thus, is exempt from both federal and Hawaii income tax under section 501(a), IRC. Taxpayer has annual gross receipts of \$200,000 or more and total assets of \$500,000 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 has a representative form of government that complies with requirements applicable to a fraternal benefit society under the insurance laws of this State. There are currently [Redacted Text] life insurance and annuity policies issued by the Taxpayer in the state of Hawaii.

Taxpayer provides 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 their individual members' volunteer activities. For example, through its [Redacted Text], Taxpayer is the largest financial supporter of [Redacted Text]; and its members donate thousands of hours conducting events for [Redacted Text]. Taxpayer also provides financial support for [Redacted Text] schools and charities.

## 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.<sup>1</sup>

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 chapter 237, HRS.<sup>2</sup>

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<sup>1</sup> § 432:2-503, HRS

<sup>2</sup> § 237-9.3(a), HRS

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