



# TAX FACTS 98-3

## Tax Information for Nonprofit Organizations

This Tax Facts answers commonly asked questions about nonprofit organizations.

### 1 Is our nonprofit organization tax-exempt?

You can be a nonprofit organization, but that does not automatically make you tax-exempt. To be tax-exempt, you must meet certain requirements. For more information, see federal Publication 557, "Tax-Exempt Status for Your Organization."

### 2 How do we apply for tax-exempt status under Hawaii tax laws?

#### Income Tax

You do not need to apply with us to be exempt from Hawaii income tax. Certain organizations (see table below for a sample listing) that are exempt from federal income tax are automatically exempt from Hawaii income tax. No separate Hawaii application is required. Most organizations are required to apply with the Internal Revenue Service (IRS) to receive tax-exempt status. For information on this process, see federal Publication 557.

Internal Revenue Code Section:	General Description of the Organization
501(c)(3)	Religious, charitable, scientific, or educational
501(c)(4)	Civic leagues, social welfare
501(c)(5)	Labor, agricultural, horticultural
501(c)(6)	Business leagues
501(c)(7)	Social and recreational clubs
501(c)(8)	Fraternal beneficiary societies
501(c)(12)	Potable water companies

#### General Excise Tax (GET)

You must apply with us to be exempt from GET. See question 7 for information on applying for an exemption from GET.

### 3 We are recognized as tax-exempt by the IRS. When is our state income tax exemption effective?

The effective date for the exemption from Hawaii income tax is the same as the effective date for federal purposes.

### 4 What if the IRS revokes our income tax exemption?

If the IRS revokes your exemption, your Hawaii income tax exemption will also be revoked on the effective date of the IRS revocation.

### 5 We are recognized as tax-exempt by the IRS. What are my reporting requirements for Hawaii income tax purposes?

Although you may be required to file a Form 990 or 990-EZ with the IRS, you are not required to file any corresponding information return for Hawaii income tax purposes. If you are required to file Form 990-T with the IRS, you are required to file Form N-70NP for Hawaii income tax purposes on the unrelated business income. Private foundations are required to file a copy of their federal filings with the Attorney General. Federal Publication 557 discusses the filing requirements and required disclosures of nonprofit organizations for federal income tax purposes.

Organizations that solicit contributions are required to register with the State of Hawaii's Attorney General unless exempted from the registration requirement. Please visit the website of their Charities Division at [ag.hawaii.gov/tax](http://ag.hawaii.gov/tax) for more information.

### 6 The IRS stated that we must file Form 990-T for unrelated business income. What type of income is this and do we have to file a return with Hawaii?

The IRS has issued guidelines about unrelated business income in federal Publication 598, "Tax on Unrelated Business Income of Exempt Organizations." Hawaii follows the federal determination of unrelated business income for Hawaii income tax purposes. In general, unrelated business income is from a sales activity that does not further the organization's exempt purpose. If you are required to file Form 990-T with the IRS, you must file Form N-70NP for Hawaii income tax purposes.

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For more information, visit the Department of Taxation's website at [tax.hawaii.gov](http://tax.hawaii.gov)

## **7 If we are tax-exempt for income tax purposes, are we also exempt from paying GET?**

Not necessarily. Under the GET Law, organizations created for the purposes listed in sections 237-23(a)(3) through (7), Hawaii Revised Statutes (HRS), may be exempt from GET, but must apply for an exemption. Go to [hitax.hawaii.gov](http://hitax.hawaii.gov) to apply for an exemption from GET. A one-time \$20 registration fee must be paid with your application if you do not have a valid GET license. If you already paid the \$20 fee to get a GET license, you must log in to your Hawaii Tax Online account to submit an application. See the Instructions for Form G-6 for more information on applying for a GET exemption.

## **8 We are a sports club. Are we also exempt from paying GET?**

No. Section 237-23, HRS, does not provide an exemption from the GET for clubs organized for pleasure and recreation. Although the organization may obtain a favorable ruling under Internal Revenue Code section 501(c)(7), the federal law is not binding on the State for purposes of the GET.

## **9 We applied for GET exemption status and received a letter approving the GET exemption for our organization. When is our exemption effective?**

Under the GET Law, the application for exemption from the GET must be filed within three months from the start of business. If the application is filed within three months, the exemption applies to income earned from the start of business. If the application is filed after three months, the exemption applies only to income received after the application was filed. Once the exemption is approved, no further application is necessary unless there is a material change in your objectives or operations.

## **10 If granted the exemption, do we have to file any GET returns?**

Please see Tax Information Release No. 2011-04 for a discussion of the GET filing requirements.

## **11 If granted the exemption, is all the income we receive exempt from GET?**

It depends. Amounts received as dues, donations, or gifts are not included in gross income subject to GET. However, gross

receipts from any activity in which the primary purpose is to produce income is subject to GET, even if used to fund your exempt purposes. Gross income received from any fundraising activity is subject to GET. Other income may be exempt from GET depending on if the activity is related to your exempt purpose (see question 12).

## **12 What types of activities are considered “fundraising activities”?**

In general, “fundraising activities” are activities conducted with the intention of generating income. Fundraising activities also include activities that fulfill the organization’s exempt function if the activities’ primary purpose is to generate income. The activity does not have to be profitable to be taxable and includes income from a one-time event. Do not confuse this with “unrelated business income” as defined for income tax purposes.

Although casual sales are exempt from GET, this exemption is not applicable to fundraisers. A fundraising activity is not a “casual sale” since the activity is not a single occasional sale or an incidental sale. It is an infrequent activity comprised of numerous sales or transactions. For example, white elephant sales, fairs, and bazaars. It does not matter that the items sold were donated to the organization.

Example: An educational institution’s exempt purpose is “to educate students in an environment conducive to learning.” The institution charges tuition to attend the institution and also sells learning materials. Occasionally, the institution has a fair and sells baked goods or other merchandise to raise funds for the institution to operate.

The gross income from the tuition and sale of learning materials is exempt from GET since it is related to the organization’s exempt purpose. The gross income from the fair and sales of merchandise, however, is taxable for GET. Even if the income received will be used to further the organization’s exempt purpose, it is subject to GET.

## **13 If we are registered as tax-exempt under the GET Law, are we also exempt from paying the GET when we buy goods and services?**

No. Because the GET is imposed on the seller and not on the customer (for example, the nonprofit organization), sellers are subject to the GET on their income from selling goods and services to you. Sellers are not tax-exempt even if their customers are. Therefore, a seller may visibly pass on their GET to you when you buy goods and services. The pass on of the GET is a matter of contract between the seller and you.

## **14 Our organization rents out facilities we own to other nonprofits, members, and the general public. Are these rents subject to GET?**

Yes. In general, when an organization rents its facilities to others, it is considered to be engaging in a business activity even if the rent may be a cost recovery amount. Some organizations whose exempt purpose is to provide facilities to the underprivileged or other exempt organizations may not be subject to GET if they are properly registered with the Department. See question 7.

## **15 What qualifies as a donation and why aren't donations subject to GET?**

A donation is a gift which is voluntarily given without compensation or any expectation of receiving something in return. Under the GET Law, there is an exemption for the value of all property that is received by gift, bequest, or inheritance. If a donor purchases a ticket (for example, a dinner, concert, or bowl of chili), the ticket sale is not a donation because something of value is being received for the donation. This is true even if the donor does not redeem the ticket. Whether something is a true donation depends on the circumstances of the activity involved and not the name given to the transaction. For example, if an organization offers the use of its facilities in exchange for a "donation," the receipt will be treated as rental income subject to GET.

## **16 We received income from a benefit dinner. Why are we taxable on the gross amount and not the cost of the dinner?**

The rules for determining the amount of the contribution deductible for income tax purposes and the amount subject to GET are different. For income tax purposes, federal rules permit under some circumstances the subtraction of the value of the goods or services provided by the nonprofit organization from the total contribution to determine the deductible portion of the contribution. The GET, as a gross receipts tax, does not allow for such deductions to reduce the gross receipts subject to GET, even if a portion of the ticket price is considered a "donation."

## **17 If we sell items and services which are donated to us, are the amounts received taxable for GET?**

Yes. The sale (including sales by auction) by a nonprofit organization of donated items is an activity in which the primary purpose is to produce income. Therefore, the gross proceeds derived from the activity are subject to GET. For more information, see Tax Information Release (TIR) No. 91-2, "Taxability of Gross Proceeds Received by a Nonprofit Organization From the Sale of Donated Services or Tangible Personal Property."

## **18 Does an activity have to be "profitable" in order for it to be subject to GET?**

No. See questions 12 and 16.

## **19 We receive interest income from our bank accounts. Is this subject to GET?**

Under the GET Law, the gross income subject to GET includes all receipts, actual or accrued, by investment of the capital of the business engaged in, including interest. Contributions, donations, dues, and income from the organization's exempt purpose that are deposited in the bank, are not considered "investment of the capital of the business engaged in." A nonprofit organization is not created for the purpose of making profits and the primary purpose for depositing the money in the bank is for safekeeping and, therefore, not subject to GET. However, interest earned from funds from an unrelated trade or business activity is subject to GET. See question 6. For more information, see TIR No. 42-74, "Application of the General Excise Tax to Interest Income."

## **20 If we are registered as an exempt organization under the GET Law, are we also exempt from paying the use tax?**

No. Although the GET Law exempts certain nonprofit organizations who have registered for a GET exemption, the Use Tax Law does not provide a complementary exemption. The use tax is a complementary tax to the GET. The use tax is imposed on tangible personal property, services, or contracting imported for use in Hawaii and acquired from a seller located outside of the state who is not subject to GET. For more information on the use tax, see Tax Facts 95-1, "Use Tax."

## **21** Where can we get additional information on how to start a nonprofit organization?

For information on how to organize your nonprofit organization under Hawaii's Nonprofit Corporation Act (Chapter 414D, HRS), contact the Business Registration Division of the Department of Commerce and Consumer Affairs at 808-586-2727.

There also is a nonprofit organization which has an assistance program to help individuals set up a nonprofit organization. Contact the Hawaii Alliance of Nonprofit Organizations, 1020 South Beretania St., 2nd Floor, Honolulu, Hawaii 96814 or call them at 808-529-0466.

### **Where to Get Forms and Information**

Website: [tax.hawaii.gov](http://tax.hawaii.gov)

Telephone: 808-587-4242

Toll-Free: 1-800-222-3229

Telephone for the hearing impaired: 808-587-1418

Toll-Free for the hearing impaired: 1-800-887-8974

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