



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809-0259

March 15, 1991

TAX INFORMATION RELEASE No. 91-2

RE: Taxability of Gross Proceeds Received by a Nonprofit Organization From the Sale of Donated Services or Tangible Personal Property

This Tax Information Release (TIR) supersedes TIR No. 82-8, dated November 8, 1982, and is intended to reiterate the Department's position concerning the taxability of gross proceeds received by a nonprofit organization from the sale of donated services or tangible personal property.

Section 237-23(a), Hawaii Revised Statutes (HRS), provides an exemption from the general excise tax for fraternal, religious, charitable, scientific, educational, communal, or social welfare activities of qualifying persons, or to the activities of hospitals, infirmaries, and sanitariums. Section 237-23(b)(3), HRS, however, provides that this exemption is not applicable 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 qualifying organizations.

The Department has continuously treated the sale (including sales by auction) of donations by a nonprofit organization for fund-raising purposes as being an "activity the primary purpose of which is to produce income"; consequently, it has subjected the gross proceeds derived from such activity to the general excise tax. Gross proceeds of sale include any charges for admission to attend or participate in the event at which the sale is held.

This interpretation and application of the statute is supported by the Hawaii Supreme Court decision in the tax appeal case of Habilitat, Inc. 65 Haw. 199 (1982). In this case, the court held that "[t]he exemption, however, does not extend to the proceeds of any activity designed to produce income, even if such receipts are thereafter employed to further the organization's altruistic goals. It applies only where the primary purpose of the particular activity is not to produce income and the activity is also a primary reason for the organization's existence." The court further held that ". . . where the object of economic gain predominates, the activity does not meet the exemptive test . . . despite an integration of the economic activity with the purpose for which the entity was organized."

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On the basis of the existing statute and the foregoing decision rendered by the Hawaii Supreme Court, the gross proceeds received by a nonprofit organization from the sale by auction or otherwise of donations for fundraising purposes are subject to the general excise tax.


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Director of Taxation