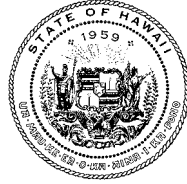


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June 29, 2011

DEPARTMENT OF TAXATION

TAX INFORMATION RELEASE 2011-01

RE: General Excise Taxation of Convention and Conference Fees

The purpose of this Tax Information Release is to clarify the treatment of registration fees and fees for rental of display space at conventions and conferences received by nonprofit organizations. Many nonprofit organizations that have received an exemption from the general excise tax under sections 237-23(a)(3) through (5) of the Hawaii Revised Statutes ("HRS") hold conferences or conventions for their members. These nonprofit organizations charge a registration fee to attend the conference or convention. In addition, these nonprofit organizations also rent display space to vendors who come to the conference or convention to provide information to the attendees of the conference or convention regarding products the vendors are selling. At some conventions and conferences, the vendors may actually sell products at the conference or convention.

Statement of Applicable Law

Section 237-23(a)(3) through (5) of the HRS provides that certain entities are not subject to general excise tax, including religious, charitable, scientific, or educational organizations, business leagues, chambers of commerce, boards of trade, civic leagues, and agricultural and horticultural organizations. However, as provided in HRS section 237-23(b), the exemptions provided in HRS section 237-23(a)(3) through (5) only apply if:

1. The organization applied and was granted an exemption from the Department of Taxation ("Department");
2. No profit inures to the benefit of any private stockholder or individual, except for death or other benefits to the members of fraternal societies; and
3. The fraternal, religious, charitable, scientific, educational, communal or social welfare activities of such organizations, or to the activities of such hospitals, infirmaries, and sanitarium as such, and *not 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 such persons.

Registration Fees

Assuming an organization has applied for and received an exemption from the Department and there is no private inurement, registration fees received by an organization described in HRS sections 237-23(a)(3) through (5) for educational conferences or conventions will not be subject to general excise tax provided that the primary purpose of the fees is not to produce income. *See also* Tax Facts 99-4, Q&A 35.

Rental of Display Space

Rental of display space may be exempt from general excise tax pursuant to HRS sections 237-23(a)(3) through 237-23(a)(5) under certain circumstances even though the exemption provided in HRS section 237-16.8 has been temporarily suspended by Act 105, Session Laws of Hawaii ("SLH") 2011. Organizations described in HRS sections 237-23(a)(3) through 237-23(a)(5) are not subject to general excise tax on gross receipts that are related to their exempt purpose, provided that the primary purpose of the fees is not to produce income. For the rental of the display space to be exempt, the organization must solicit exhibits on the basis of their potential informational value to the attendees and on the understanding that the exhibitors will not be oriented to order-taking or selling. Contracts with the exhibitors must prohibit sales or order-taking at the convention or conference. *See* Rev. Rul. 75-516, 1975-2 C.B. 220, which was superseded by Rev. Rul. 85-123, 1985-2 C.B. 168, due to the enactment of section 513(d) of the Internal Revenue Code which specifically exempted the display fees from unrelated business income tax. *See also* U.S. v. American College of Physicians, 475 U.S. 834 (1986). Therefore, under some circumstances, rental of display space may be exempt from the general excise tax.

For example, a nonprofit organization, whose purpose is to educate cardiologists regarding developments in their field, has received an exemption from general excise tax after filing Form G-6, "Application for Exemption from General Excise Taxes," with the Department. At its annual convention, the organization provides speakers on various topics to educate the cardiologists on developments in their field. In addition, the organization rents display space to drug companies, which provide information on new and current drugs available from their companies. The organization in its contracts with the exhibitors prohibits the drug companies from selling the drugs at the convention or taking orders for the drugs at the convention. The rental income from the display space occupied by the drug companies will not be subject to general excise taxation because the primary purpose of the rental of the space is to provide educational information to the doctors concerning these drugs. In contrast, if vendors are allowed to sell or take orders for the drugs at the convention, then the rental of the display space would be subject to general excise tax. Furthermore, if the nonprofit organization rented display space to a luxury car dealership, that rent would be subject to general excise tax because the primary purpose of the rental is to produce income. The exhibit by the car dealership does not provide information relating to the organization's exempt purpose.

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June 29, 2011

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For more information contact the Technical Section at (808) 587-1577 or e-mail at Tax.Technical.Section@hawaii.gov.

A handwritten signature in black ink that reads "Frederick D. Pablo". The signature is written in a cursive, flowing style.

FREDERICK D. PABLO

Director of Taxation