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## A BILL FOR AN ACT

RELATING TO GENERAL EXCISE TAX.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The general excise tax accounts for over fifty  
2 per cent of state revenue realizations. Generally, the general  
3 excise tax is an efficient tax assessed on businesses for the  
4 privilege of doing business in Hawaii. The efficiency of the  
5 general excise tax stems from its broad-based application  
6 throughout the economy, coupled with its low rate.

7           Over time, the general excise tax's efficiency has been  
8 diminished due to the routine addition of tax exemptions for  
9 particular businesses or industries. A majority of these  
10 exemptions allow businesses that are otherwise very profitable  
11 to avoid paying the general excise tax altogether. Because some  
12 businesses pay no tax, they often do not register to do business  
13 in Hawaii or file tax returns. Furthermore, out-of-state  
14 businesses that claim exemption from the general excise tax also  
15 fail to register, file, or otherwise expressly declare the  
16 exemption. This lack of data on businesses operating in Hawaii  
17 greatly undermines the department of taxation's ability to  
18 gather information on businesses claiming tax benefits.



1 Requiring businesses to be "on the radar" of the department of  
2 taxation will greatly assist in tax administration by providing  
3 valuable information that the State may use in compliance  
4 efforts.

5 Disallowing any general excise tax benefits unless basic  
6 information is filed is rational and justifiable, especially  
7 when tax benefits are a matter of legislative grace. In a time  
8 when tax incentives are reviewed with scrutiny by policymakers  
9 and administrators, it is important to ensure that businesses do  
10 not avoid government tax-benefit oversight by assuming that  
11 filing is unnecessary when no tax is due as a result of tax  
12 benefits. Even when no tax is due, officials should have all  
13 necessary data and information about persons conducting business  
14 in Hawaii to test the effectiveness of the tax system and  
15 accurately account for those that enjoy exemptions from it.

16 Additionally, though the general excise tax is a tax on  
17 businesses, Hawaii businesses are allowed by law to pass on  
18 their general excise tax costs to customers as a cost recovery.  
19 However, as the economy has declined, more businesses have  
20 failed to pay their general excise tax, even though the tax is  
21 still visibly passed on to Hawaii consumers under the guise that  
22 it would be paid to the government. Businesses that do not



1 timely remit the tax recovery amount are known to use these  
2 funds to pay operating expenses, and some disreputable  
3 businesses pocket these funds with no intention of paying their  
4 taxes. In short, the practice of increasing consumer costs  
5 under the pretext of tax recovery now becomes a consumer-  
6 protection matter, and businesses should be liable for paying  
7 those tax recovery amounts owed to the State. Especially since  
8 more businesses are keeping these tax recovery amounts to cover  
9 costs during this economic downturn, the government inevitably  
10 becomes the last creditor to be paid.

11 To restore efficiency in Hawaii's general excise tax,  
12 without increasing the tax rate, repealing exemptions, or  
13 placing additional burdens on businesses other than what is fair  
14 and reasonable, this Act strengthens the general excise tax by  
15 requiring all businesses that enjoy excise tax exemptions to  
16 register to do business in Hawaii, timely file their tax  
17 returns, as well as expressly claim their entitlement. These  
18 requirements ensure that the proper information is conveyed to  
19 the State to monitor a tax exemption's cost and effectiveness.  
20 Additionally, this Act creates a personal trust liability for  
21 businesses that use the general excise tax as the basis for



1 increasing their prices and ensures that those funds are paid to  
2 the State for the benefit of consumers and businesses.

3 SECTION 2. Chapter 237, Hawaii Revised Statutes, is  
4 amended by adding two new sections to be appropriately  
5 designated and to read as follows:

6 "§237- General excise tax benefits; denial of tax  
7 benefits for failure to properly claim. (a) Notwithstanding  
8 any other law to the contrary, a person shall not be entitled to  
9 any general excise tax benefit under this chapter unless the  
10 person claiming the general excise tax benefit:

11 (1) Obtains a license to engage in and conduct business as  
12 required under section 237-9; and

13 (2) Files the annual general excise tax reconciliation tax  
14 return as provided under this chapter or chapter 231  
15 not later than twelve months from the due date  
16 prescribed for the return.

17 (b) The director may require any taxpayer to furnish  
18 information to determine the validity of any general excise tax  
19 benefit and may adopt rules pursuant to chapter 91 necessary to  
20 effectuate the purposes of this section.

21 (c) The director may waive the denial of the general  
22 excise tax benefit under subsection (a) if the failure to comply



1 is due to reasonable cause and not to the wilful neglect of the  
2 taxpayer.

3 (d) For purposes of this section, "general excise tax  
4 benefit" means any tax exemption, exclusion of a taxable amount,  
5 a reduction from the measure of a tax imposed, a tax deduction,  
6 a tax credit, a lower rate of tax, a segregation or division of  
7 taxable amounts between multiple taxpayers involved in the same  
8 transaction, or any income splitting allowed under this chapter.

9 §237- Certain amounts held in trust; liability of key  
10 individuals. (a) There shall be personal liability for the  
11 taxes imposed under this chapter as provided in this section for  
12 the following amounts of gross income or gross proceeds:

13 (1) Any amount collected as a recovery of the taxpayer's  
14 liability under this chapter, where the amount is  
15 passed on as the tax owed by the taxpayer under this  
16 chapter for the transaction and is separately stated  
17 or accounted for in a receipt, contract, invoice,  
18 billing, or other evidence of the business activity;  
19 or

20 (2) An amount equal to the tax liability under this  
21 chapter on a transaction where a taxpayer does not  
22 separately state or account for the amount as a tax



1 recovery as provided in paragraph (1). For purposes  
2 of this paragraph, the amount of the imputed tax  
3 liability is the result of multiplying the gross  
4 income or gross proceeds received in the transaction  
5 by the tax rate.

6 The amounts under paragraphs (1) and (2) shall be held in trust  
7 for the benefit of the State and for payment to the State in the  
8 manner and at the time required by this chapter.

9 (b) The personal liability under this section applies to  
10 any officer, member, manager, or other person having control or  
11 supervision over amounts of gross proceeds or gross income  
12 collected to pay the general excise tax and held in trust under  
13 subsection (a), or who is charged with the responsibility for  
14 the filing of returns or the payment of general excise tax on  
15 gross income or gross proceeds collected and held in trust under  
16 subsection (a). The person shall be personally liable for any  
17 unpaid taxes and interest and penalties on those taxes, if such  
18 officer or other person wilfully fails to pay or to cause to be  
19 paid any taxes due from the taxpayer pursuant to this chapter.

20 For purposes of this subsection, "wilfully fails to pay or  
21 to cause to be paid" shall be construed in accordance with  
22 judicial interpretations given to similar provisions of the



1 Internal Revenue Code; consistent therewith, the term "wilfully"  
2 shall mean a voluntary, intentional violation of a known legal  
3 duty.

4 (c) An officer, member, manager, or other responsible  
5 person shall be liable only for general excise taxes on gross  
6 income or gross proceeds collected, plus interest and penalties  
7 on those taxes, that became due during the period the person had  
8 control, supervision, responsibility, or a duty to act for the  
9 taxpayer as described in subsection (b) of this section.

10 (d) Persons liable under subsection (b) are exempt from  
11 liability when nonpayment of the general excise tax on gross  
12 income or gross proceeds held in trust is for good cause as  
13 determined by the director.

14 (e) The voluntary or involuntary dissolution of the  
15 taxpayer or the withdrawal or surrender of its right to engage  
16 in business in this state shall not discharge the liability  
17 hereby imposed."

18 SECTION 3. This Act does not affect rights and duties that  
19 matured, penalties that were incurred, and proceedings that were  
20 begun, before its effective date:

21 SECTION 4. New statutory material is underscored.



1 SECTION 5. This Act shall take effect on July 1, 2010, and  
2 shall apply to gross income or gross proceeds received by  
3 applicable taxpayers on or after its effective date.



**Report Title:**

General Excise Tax; Exemption Requirement; Trust Fund Liability

**Description:**

Precludes a taxpayer from using a general excise tax benefit, including exemptions, deductions, lower rates, or income splitting, unless the taxpayer follows all administrative requirements, subject to exemptions. Creates trust liability for revenues collected by a business as a tax recovery whether such amount is separately stated or not. (HB2595 CD1)

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