



Hawaii Tax News Flash

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- A Possible Defense Against GET Hike? (*Immediate Action Suggested*)
- Bill Advances Toward Making GET a Trust Fund Tax

A Possible Defense Against GET Hike?

STATUS: RECOMMITTED TO CONFERENCE COMMITTEE

As we previously reported, [SB 2402 CD1](#) “temporarily” suspends a list of exemptions from the general excise tax, which would instead be taxed at 0.5% from July 1, 2010, to June 30, 2015. Among the exemptions that would be subject to the new 0.5% rate are:

- The exemption for intercompany services and interest between related entities. This would tax most shared services, such as intercompany G&A, legal, accounting, and IT cost allocations. And let’s not forget stated or imputed interest on intercompany loans.
- The partial deduction a sublessor gets for lease rent paid for the space subleased. This could impose an additional tax for anyone both receiving and paying rent on the same space.
- The exemptions for property or services exported out of state. This would tax exporters, and service providers getting paid for projects outside of Hawaii.
- The exemption for the sale of tangible personal property to the U.S. Government and state-chartered credit unions.
- The exemption for the sale of imported tangible personal property that is sold for resale at wholesale (also known as the “Big Box” exemption).

The bill, as it is written now, provides an escape for an indefinite period of time: subsection (d) states, **“This section shall not apply to gross income or gross proceeds from binding written contracts entered into prior to July 1, 2010, that do not permit the passing on of increased rates of taxes.”** Taxpayers for whom this new tax is going to be an issue should seriously consider entering into written contracts, or amending contracts that already exist, to include a provision that does not permit the passing on of increased rates of taxes.

If it is decided that a contract or contract amendment is appropriate, it should be executed by all parties **immediately**. We have no way of knowing whether the final version of the bill will contain a grandfather date, or, if it does, whether the grandfather date will continue to be July 1, 2010, or an earlier date, such as the date of enactment. We have no way of knowing whether the grandfather provision will provide relief for an indefinite time as it does now, or whether the relief will be more

limited. We raise these issues to give taxpayers the chance to build a defense while there still may be time to do so. In particular, taxpayers conducting business through multiple entities that allocate costs of shared services should consider protective measures now.

Bill Advances Toward Making GET a Trust Fund Tax

STATUS: CONFERENCE DRAFT REPORTED OUT

[HB 2595 CD1](#), originally sponsored by the Department of Taxation, would deny the benefit of any lower rate, credit, deduction, or income split, unless the taxpayer files a return within one year after the return is due.

It would also impose personal liability against a “responsible person” in a business that fails to pay the general excise tax, just as the IRS does for businesses that withhold tax from employees and fail to pay that tax over to the government.

The Conference Committee made some very interesting changes from the prior version.

In the prior version of the bill, [HB 2595 SD2](#), the provision denying tax benefits unless a return was filed contained explicit exemptions for tax-exempt charities and certain types of income thought to be nonbusiness in nature. The Conference Committee took these exemptions out. The committee report explained that there was no need to exempt the charities because “every person listed in that section [237-23] is completely exempt from the chapter”, and that the other amounts listed in section 237-24 didn’t have to be exempted either “because that section states that Chapter 237, HRS, specifically does not apply to every amount listed.” Some practitioners were shaking their heads in disbelief. A very large number of the exemptions written into the GET law are prefaced with the statutory language, “This chapter shall not apply to.” See, for example, HRS §§237-23, 237-23.5, 237-24, 237-24.3, 237-24.5, 237-24.7, 237-24.75, 237-24.8, 237-24.9, 237-29.7, 237-29.8. Would ALL of these provisions be exempt from the impact of this bill? Or will the Department simply dismiss the conference report comments as folly, and feel constrained to enforce the law against nonprofits and nonbusiness income now that the exemptions are gone? We think it’s fair to say that even the Department of Taxation didn’t anticipate this much of a plot twist.

Information on these and other bills moving through the Legislature may be obtained from the Legislature’s web site, www.capitol.hawaii.gov.

In any event, your client service team at Accuity can bring you the resources that you may need. Please do not hesitate to contact your client service team for more information or Thomas Yamachika at thomas.yamachika@accuityllp.com



First Hawaiian Center, 999 Bishop Street, Suite 1900, Honolulu, HI 96813
Ph: (808) 531-3400 | Fax: (808) 531-3433

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