

DEPARTMENT OF HUMAN SERVICES 10:53

Repeal of Chapter 15-175
Hawaii Administrative Rules
and the Adoption of Chapter 17-2013
Hawaii Administrative Rules

January 23, 2006

SUMMARY

1. Chapter 175 of Title 15, Hawaii Administrative Rules, entitled "General Excise Tax Exemptions" is repealed.

2. Chapter 2013 of Title 17, Hawaii Administrative Rules, entitled "General Excise Tax Exemptions" is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT
AND TOURISM

SUBTITLE 14

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF
HAWAII

CHAPTER 175

GENERAL EXCISE TAX EXEMPTIONS

Repealed

§§15-175-1 to 15-175-21 Repealed. [R FEB 24 2006]

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF
HAWAII

CHAPTER 2013

GENERAL EXCISE TAX EXEMPTIONS

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Historical Note: Chapter 17-2013, Hawaii Administrative Rules, is substantially based upon Chapter 377 of Title 6, Hawaii Administrative Rules, [Eff 2/8/93; am 6/8/98; R 10/25/99], and Chapter 175 of Title 15, Hawaii Administrative Rules. [Eff 10/25/99; R FEB 24 2006]

SUBCHAPTER 1

GENERAL PROVISIONS

517-2013-1 Purpose. This chapter implements sections 201G-116 and 237-29, HRS, regarding general excise tax exemptions for qualified persons and firms involved in providing low and moderate income housing. The legislative intent of the general excise tax exemption is to achieve cost savings to assure economic feasibility which will encourage and enable the production of as many lower cost housing units as possible. [Eff FEB 24 2006] (Auth: HRS §237-29) (Imp: HRS 55237-29, 201G-116)

517-2013-2 Definitions. As used in this chapter:

"Allowable construction costs" means expenses incurred by a contractor, for contracting, services and materials which are to be incorporated (in such a form as to be perceptible to the senses) into, or used completely by the contractor in, the development and construction of real property improvements and fixtures for a newly constructed, or moderately or substantially rehabilitated eligible housing project.

"Allowable development costs" means amounts incurred by a developer or a contractor for contracting, services, and materials that are used for the planning, development, and construction of a newly constructed, or moderately or substantially rehabilitated, eligible housing project.

"Allowable financing costs" means:

- (1) Amounts paid by a developer or owner to the holder of any debt instrument secured by the leasehold or fee simple interest of the developer or owner in an eligible housing project, and to qualified persons or firms in connection with obtaining or administering such financing; and
- (2) Interest earned by a developer or owner on construction loan funds.

"Claimant" means a person or firm filing a claim with the corporation for general excise tax exemptions allowed under section 237-29, HRS.

"Contractor" means a person defined as a contractor under section 237-6, HRS.

"Corporation" means the housing and community development corporation of Hawaii.

"Developed under the sponsorship of a private nonprofit corporation" means a newly constructed, or moderately or substantially rehabilitated housing project developed under a program qualified by the corporation and sponsored by a private nonprofit corporation.

"Eligible housing project" means:

- (1) a rental housing project by a qualified person or firm where at least fifty percent of the available units are for households with incomes at or below eighty per cent of the area median family income, as determined by HUD, of which at least twenty per cent of the available units are for households with incomes at or below sixty per cent of the area median family income, as determined by HUD; or
- (2) A housing project meeting at least one of the three income criteria and at least one of the three development criteria that follow:
 - (A) Income criteria:
 - (i) At least twenty per cent of the units in the project are rented or sold to households with incomes of

- up to fifty per cent of the area median income as determined by HUD;
- (ii) At least forty per cent of the units are rented or sold to households with incomes of up to ninety-five per cent of the area median income, as determined by HUD; or
 - (iii) At least sixty per cent of the units must be rented or sold to households with incomes of up to one hundred forty per cent of the area median income, as determined by HUD; and
- (B) Development criteria:
- (i) Rental or for-sale housing projects which are developed under a housing development program pursuant to part II, subpart F, of chapter 201G, HRS;
 - (ii) Rental or for-sale housing projects which are developed under a government assistance program approved by the corporation; or
 - (iii) Rental or for-sale housing projects developed under the sponsorship of a private nonprofit corporation.

"Government assistance program" means any housing program qualified by the corporation and administered or operated by the State, the corporation, the United States, or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise, which may be used to effectuate housing development for qualified persons in the State.

"Government assistance program" includes, but is not limited to, the United States Department of Agriculture's 502 and 515 programs; the Federal Housing Administration's 235 program; the United States Department of Housing and Urban Development's HOME, HOPE, 202, and 811 programs; the section 802 military housing program; the military construction

and family housing program; the military housing privatization initiative program; the low income housing tax credit program; the corporation's rental housing trust fund program; the corporation's rental assistance program; tax exempt or taxable multi-family bond financing programs administered by the corporation or any of the counties; and residential projects developed by the department of Hawaiian home lands.

"HRS" means the Hawaii Revised Statutes.

"HUD" means the United States Department of Housing and Urban Development.

"Limited distribution mortgagor" means an entity which may consist of a person, partnership, association, or limited liability partnership and company which has executed with the federal, state, or county agency a regulatory agreement as to rents, charges, profits, dividends, development costs, and methods of operation.

"Lower income households" mean households with incomes up to and including one hundred forty per cent of the area median income as determined by HUD.

"Moderate rehabilitation" means rehabilitation to upgrade a unit to a decent, safe, and sanitary condition, or to repair or replace major building systems or components in danger of failure.

"Nonprofit corporation" means a corporation incorporated under chapter 414D, HRS.

"Qualified person or firm" means an individual, partnership, joint venture, corporation, association, limited liability partnership, limited liability company, business, trust, or any organized group of persons or legal entities, or any combination thereof, which possesses all professional or vocational licenses necessary to do business in the State of Hawaii in conjunction with the planning, design, financing, construction (including materials and supplies for new construction, moderate rehabilitation, and substantial rehabilitation), sale, or rental of eligible housing projects.

"Staff" means the employed personnel of the housing and community development corporation of Hawaii.

"State" means the State of Hawaii.

"Substantial rehabilitation" means the improvement of a property to a decent, safe, and sanitary condition that requires more than routine or minor repairs or improvements and may include, but is not limited to, the gutting and extensive reconstruction of a unit or cosmetic improvements coupled with the curing of a substantial accumulation of deferred maintenance. Substantial rehabilitation also includes rehabilitation activity that is necessary to correct substandard conditions to make essential improvements, and to repair major systems in danger of failure. The term "major systems" includes, but is not limited to, such items as roof structures, ceiling, wall or floor structures, foundations, elevators, and plumbing or electrical repair, replacement, or in some cases removal. Substantial rehabilitation activities also include energy and other natural resource conservation related repairs and improvements, as well as improvements required to provide access or added safety for the handicapped or elderly and renovation, alteration, or remodeling to convert or adapt structurally sound property to the design and condition required for a specific use (e.g., conversion of a hotel to housing for elders).

[Eff ~~FEB 29, 2013~~ FEB 24 2006] (Auth: HRS §237-29) (Imp: HRS 55237-29, 201G-116)

517-2013-3 Fees. The corporation shall charge the following fees:

- (1) Application for review and certification for exemption of eligible housing project and claimant: \$200
- (2) Subsequent applications for certification of claimants: \$100; and
- (3) Application for annual certification of rental income: \$120.

SUBCHAPTER 2

CERTIFICATION OF PERSONS AND ENTITIES

517-2013-11 Types of income eligible for exemption. (a) With respect to for-sale housing projects, the gross income received by a qualified person or firm as allowable development costs, allowable construction costs, or allowable financing costs for the planning, design, financing, construction, or sale of an eligible housing project may be exempt from general excise taxes.

(b) With respect to rental housing projects, the gross income received by a qualified person or firm as allowable development, costs, allowable construction costs, or allowable financing costs for the planning, design, financing, construction, moderate rehabilitation, or substantial rehabilitation of an eligible housing project may be exempt from general excise taxes.

(c) Rents received from residential units in a rental housing project may be exempt from general excise taxes; provided that in an economically integrated housing project in which only a portion of the units in a project are targeted for lower income households, the exemption shall apply to only that portion targeted for lower income households.

(d) Revenues received from commercial, industrial, or other nonresidential uses within an eligible housing project, such as coin operated vending machines, laundromats, parking fees, and the like, shall not be eligible for an exemption from general excise taxes.

(e) Except for moderate rehabilitation and substantial rehabilitation, revenues received for contracting, services, and materials provided in connection with the management, operation, maintenance, and repair of a rental housing project shall not be eligible for an exemption from general excise taxes. [Eff FEB 24 2006] (Auth: HRS §237-29) (Imp: HRS 5237-29)

517-2013-12 Application for certification of newly constructed or rehabilitated housing projects.

When an exemption from general excise taxes is requested by a claimant involved with a newly constructed or rehabilitated housing project, the following shall apply:

- (1) The developer or general contractor of an eligible housing project shall submit to the corporation completed general excise tax exemption claims (department of taxation form G-37) on behalf of any subcontractors, material houses, real estate sales agencies, or other firms involved with the planning, design, financing, construction, or sale of the housing project;
- (2) Along with the claim forms, the developer or general contractor shall submit to the corporation the following information on the eligible housing project:
 - (A) A description of the eligible housing project, including the number of housing units affordable to households earning up to fifty per cent, sixty per cent, eighty per cent, ninety-five per cent, and one hundred forty per cent, respectively, of the area median income, as determined by HUD;
 - (B) Authorization for the corporation to conduct on-site inspections of the affordable housing project if the project is not being developed or rehabilitated under the sponsorship of the corporation;
 - (C) A cover letter requesting the tax exemption, which includes the following:
 - (i) A list of qualified persons or firms previously granted or currently claiming an exemption; and
 - (ii) Contract amounts for each of the qualified persons or firms; and

- (D) Any additional information necessary for the corporation to make a determination; and
- (3) Upon receipt, staff of the corporation shall time stamp the claim form.
 - (A) If the person or firm is found to be eligible under these rules, staff shall issue a certification for exemption to the claimant within ten working days thereafter, and shall forward the originals of the certified claim forms to the department of taxation.
 - (B) If a person or entity is found to be ineligible under these rules, staff shall, within ten working days of receipt, so notify the claimant and the developer or general contractor, along with the reason or reasons that the claim is ineligible for an exemption.

In no event shall the corporation accept a claim for certification more than three years following the close of the claimant's taxable year for which the exemption is claimed. [Eff FEB 24 2006] (Auth: HRS §237-29) (Imp: HRS §237-29)

§17-2013-13 Application for certification of rental housing projects. The following requirements shall apply to requests for exemptions from general excise taxes for affordable rents received from affordable housing units in newly constructed or moderately or substantially rehabilitated rental housing projects:

- (1) The claimant shall annually complete and submit to the corporation a general excise tax exemption claim (department of taxation form G-37);
- (2) Along with the claim form, the claimant shall submit to the corporation the following information on the eligible housing project:

- (A) A description of the eligible housing project, including the number of housing units affordable to households earning up to fifty per cent, sixty per cent, eighty per cent, ninety-five per cent, and one hundred forty per cent, respectively, of the area median income, as determined by HUD;
 - (B) A schedule showing rents charged on all housing units providing verification that the lower income household tenants meet the income criteria necessary for the tax exemption and an audited income statement; and
 - (C) Any additional information necessary for the corporation to make a determination; and
- (3) Upon receipt, staff of the corporation shall time stamp the claim form; and:
- (A) If the claimant is found to be eligible under these rules, staff shall issue a certification for exemption within ten working days thereafter, and shall forward the original of the certified claim form to the department of taxation; or
 - (B) If a person or entity is found to be ineligible under these rules, staff shall, within ten working days of receipt, so notify the claimant, along with the reason or reasons that the claim is ineligible for an exemption.

In no event shall the corporation accept a claim for certification more than three years following the close of the claimant's taxable year for which the exemption is claimed. [Eff FEB 24 2006 I (Auth: HRS 5237-29) (Imp: HRS 5237-29)]

517-2013-14 Criteria for determining eligibility of projects. In approving or disapproving a project for exemption from general excise taxes, the corporation shall determine whether:

- (1) The project is an eligible housing project under these rules; and
- (2) The project is consistent with any other requirements under the law or under this chapter. [Eff FEB 24 2006] (Auth: HRS §§201G-116, 237-29) (Imp: HRS §§201G-116, 237-29)

SUBCHAPTER 3

MISCELLANEOUS PROVISIONS

517-2013-21 Exemptions for certain existing rental projects. Any existing rental project for which a general excise tax exemption was granted by the Hawaii housing authority prior to June 9, 1983, is not required to reapply for an exemption unless there is a change in use or ownership of the project which results in a change in the target tenant population. Upon such a change in use or ownership, application for recertification shall be made to the corporation. If qualified, the successive owner of the project may receive an annual exemption as long as the project remains an eligible housing project. [Eff FEB 24 2006] (Auth: HRS §237-29) (Imp: HRS §§ 201G-116, 237-29)

