



TAX FACTS

From the
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GENERAL EXCISE VS. SALES TAX

96-1

Did you know that Hawaii does not have a sales tax? It's true! What most people think is a sales tax actually is a gross receipts tax, Hawaii's general excise tax. This is more than just a case of different names for the same thing; general excise and sales taxes are two completely different types of taxes.

A **sales tax** is a tax imposed on consumers who purchase goods at retail. Sellers are required to charge and collect sales taxes from consumers, usually a percentage of the retail sales price of an item, and pay the sales tax collected to the state or locality imposing the tax on behalf of the consumer. If a seller fails to collect the sales tax from the buyer, then that seller must pay the tax out of his or her own pocket. The bottom line, however, is that **a sales tax is a tax which is imposed on customers**, and which retailers are required to collect for the state or locality.

The general excise tax, on the other hand, is a tax levied on gross income (i.e., total business income before any business expenses are deducted) derived from business activity in Hawaii. It is different from sales taxes in two major ways.

First, the **general excise tax is imposed on the business** instead of on the customer. Rather than merely acting as tax collectors, businesses are themselves taxed on their income. The general excise tax, therefore, is considered to be an expense which businesses incur in the normal course of doing business in Hawaii, along with other expenses such as labor costs, utility bills, supplies, cost of inventory, and the like.

Second, the general excise tax is levied on gross income from almost all types of business activities. These include sales of tangible personal property at both wholesale and retail, services, contracting, commissions, interest, lease or rental activities, and more. The general excise tax rate varies depending on the business activity; it is 0.15% on insurance commissions, 0.5% on certain activities such as wholesaling, and 4% on most activities at the consumer level.

The 0.5% and 4% rates are the same rates imposed by the Hawaii use tax. As discussed in Tax Facts No. 95-1, the use tax is levied on the landed value of tangible personal property imported into Hawaii, and complements the general excise tax by requiring persons importing goods from outside Hawaii to pay the same rate of tax that an in-State seller would have paid in general excise tax had those goods been purchased in Hawaii.

The following questions frequently arise because people confuse the unique nature of the general excise tax with that of a sales tax.

1. **Why do businesses charge me (the customer) the tax?**

Businesses are not actually charging you the tax. Instead, they are just showing you the amount which they have included in the total price in order to pay the general excise tax due on the transaction. For example, if your bill says \$100 plus \$4 tax for a total price of \$104, it means that the total price is \$104, of which \$4 is included to pay the general excise tax due on the transaction.

When a business chooses to show an amount which is represented as general excise tax in this way, it is said to be "visibly passing on the general excise tax to the customer".

2. **Must businesses visibly pass on the general excise tax to their customers?**

No. Businesses are not required to visibly pass on the general excise tax to their customers. In fact, the general excise tax law says nothing at all about how the business recovers this expense from the customer.

There are, however, certain circumstances in which the visible passing on of the general excise tax is prohibited. For example, if the price of goods or services is fixed by law, such as insurance commissions or towing charges, businesses cannot add on a tax component which would exceed the rate established by law. For further information on when the visible passing on of the general excise tax is prohibited, call the Department of Commerce and Consumer Affairs' Office of Consumer Protection at 587-3222.

3. If a business does not visibly pass on the general excise tax to its customers, does it mean that there is no tax?

No. Just because a business does not visibly pass on the general excise tax does not mean that there is no tax on the transaction.

Because businesses use part of the income derived from business transactions with customers to pay for their business expenses including taxes, the general excise tax is a component of the price customers are charged whether it is visibly passed on or not. As a result, while the tax law generally is silent with respect to a business' dealings with its customers, it specifically prohibits businesses which do not visibly pass on the general excise tax from claiming that the tax is not a part of the price. In other words, businesses which do not visibly pass on the general excise tax cannot claim that there is no tax included, or that no tax is charged. Businesses which violate this provision may be fined up to \$50.

4. If businesses are not required to visibly pass on the general excise tax to their customers, why do they do it?

Businesses have been visibly passing on the general excise tax to customers for decades. It did serve a purpose at one time. For income tax purposes, any general excise tax which was visibly passed on was treated as a sales tax which could be claimed as an itemized deduction. That income tax provision, however, was repealed for tax years beginning in 1987.

At the present time, only businesses which also are subject to the 7.25% Hawaii transient accommodations tax may derive a tax benefit from visibly passing on their general excise tax to their guests or tenants. These taxpayers may exclude the general excise tax visibly passed on to their guests or tenants from gross rental income subject to the transient accommodations tax.

5. Why do some businesses add nothing extra for tax, some add 4%, and some add 4.166%?

The reason depends first on whether the business chooses to visibly pass on the tax or not, and second, if visibly passed on, the extent to which the business chooses to recover the general excise tax expense incurred on the transaction through a specific charge to the customer.

IF the business does not add anything extra for tax, then the business has chosen not to visibly pass on its general excise tax expense.

EXAMPLE 1 - Business X charges its customers \$125; it does not visibly pass on its general excise tax expense. The customer pays \$125 to X, and X pays \$5 (4% of \$125) in general excise tax to the State. Part of the remaining \$120 (the \$125 total price less the \$5 tax paid) will be used by X to pay its other expenses; the rest is X's profit.

IF the business adds 4% extra for tax, then the business has chosen to visibly pass on its general excise tax expense, and to recover 4% of a base amount from customers to pay the general excise tax expense incurred on the transaction. The 4% recovered is part of the total price subject to the general excise tax.

EXAMPLE 2 - Business Y charges its customers a base amount of \$125 and visibly passes on an additional \$5 (4% of \$125) for a total price of \$130 (\$125 + \$5). The customer pays \$130 to Y, and Y pays \$5.20 (4% of \$130) in general excise tax to the State. Part of the remaining \$124.80 (the \$130 total price less the \$5.20 tax paid) will be used by Y to pay its other expenses; the rest is Y's profit.

IF the business adds 4.166% extra for tax, then the business has chosen to visibly pass on its general excise tax expense, and to recover 4.166% of a base amount from customers to pay the general excise tax expense incurred on the transaction.

EXAMPLE 3 - Business Z charges its customers a base amount of \$125 and visibly passes on an additional \$5.21 (4.166% of \$125) for a total price of \$130.21 (\$125 + \$5.21). The customer pays \$130.21 to Z, and Z pays \$5.21 (4% of \$130.21) in general excise tax to the State. Part of the remaining \$125 (the \$130.21 total price less the \$5.21 tax paid) will be used by Z to pay its other expenses; the rest is Z's profit.

In the three examples above, note that, although the amount of general excise tax paid to the State differed, the percentage due the State in general excise tax was the same (i.e., 4%).

6. How do the examples above differ from a 4% sales tax?

There are 3 major differences. First, if it had been a sales tax, then Businesses X, Y, and Z under question 5 would be required to show the tax as a separate line item on the customer's bill or invoice; it would not be optional. Second, they would be required to collect exactly 4% in sales tax; not more or less than 4%, but exactly 4%. Third, the 4% tax collected from the purchaser would be the amount paid to the State; not 4% of the total amount paid by the purchaser.

EXAMPLE - Retailer A sold an item to its customer for \$125. When it rang up the sale, A added 4% of the \$125 sales price (\$5) for state Q's sales tax. The customer paid \$130 to A (the \$125 sales price plus the \$5 sales tax). A pays the \$5 in sales tax collected to state Q.

7. Can businesses charge more than 4.166%?

The general excise tax law does not limit the percentage which can be visibly passed on to customers (as stated earlier, the law is silent on this issue), but consumer protection laws do.

Because the amount visibly passed on is represented as general excise tax, the business cannot pass on an amount which exceeds the actual general excise tax due on the gross income from that transaction. To do so would be a misrepresentation of the facts and a violation of consumer protection laws administered by the Department of Commerce and Consumer Affairs' Office of Consumer Protection.

8. A lot of businesses visibly pass on 4.167% to their customers. Is that allowed?

No. Businesses may not visibly pass on 4.167% because it is more than 4.166%. When computing the optimum percentage to visibly pass on, many businesses round up 4.16666% to 4.167%. Rounding upwards is not permitted because it may result in an amount visibly passed on to the customer which is more than the actual tax due on the gross income from that transaction.

The Office of Consumer Protection realizes that many businesses visibly passing on the general excise tax at the 4.167% rate are doing so because the Department of Taxation and the Department of Commerce and Consumer Affairs have not previously clarified how consumer protection laws applied to the general excise tax. They also realize that it will take some time to educate and inform businesses about the new position agreed to by both departments on the visible passing on of the general excise tax. As a result, they will not actively pursue businesses which use the 4.167% rate for the present although these businesses should change this practice as soon as possible. The Office of Consumer Protection will, however, take immediate action against businesses which visibly pass on an excessive amount such as 4.5%.

For more information on what is legally permissible to visibly pass on, contact the Office of Consumer Protection at 587-3222.

9. If a business chooses to visibly pass on the general excise tax to its customers, does it have to notify customers ahead of time, or can it just add the tax on without notification?

Because the amount visibly passed on to customers is a component of the total price, businesses are required to notify customers of their intent to add an additional amount as tax whenever prices are quoted. Furthermore, they must specify the exact percentage to be added. Telling a customer that "tax" will be added is not sufficient since the customer has no way of knowing whether the amount added on will be 4%, 4.166% or some other amount. Businesses must ensure that their intention to visibly pass on the general excise tax is prominently noted and thoroughly understood by customers before the transaction takes place.

EXAMPLE - Business L charges a base price of \$125 for a repair service, to which 4.166% of that base amount (\$5.21) will be added as tax for a total price of \$130.21 (the \$125 base amount plus the \$5.21 general excise tax visibly passed on). When potential customers call to inquire about the cost of that repair service, L cannot say that the price is \$125 or \$125 plus tax. L must either quote the total price of \$130.21, or say that the price is \$125 plus 4.166% for general excise tax.

10. If an item is sold by a wholesaler to a retailer which in turn sells that same item to a customer, and if both the wholesaler and the retailer pay general excise tax when they sell that item, isn't that double taxation since the sale of that item is taxed twice?

No, double taxation occurs only when the same transaction/sale is taxed twice. The general excise tax is a tax which is imposed on each business transaction occurring in Hawaii.

In this situation, there are two sales transactions, and each is separately taxed. The wholesaler in the first transaction is taxed at 0.5% of the gross proceeds of the sale. The retailer in the second transaction is taxed at 4% of the gross proceeds of sale. Because there is general excise tax due on every transaction, with intermediate transactions usually being taxed at a lower rate, the tax is often said to "pyramid".

11. Are tax-exempt organizations exempt from the general excise tax when they buy goods and services?

No. Because the general excise tax is levied on the business receiving the income rather than on the customer, businesses are subject to the general excise tax on transactions with tax-exempt organizations because businesses are not tax-exempt even if their customers are. Therefore, tax-exempt organizations will have the general excise tax passed on to them when they buy goods and services. Tax-exempt organizations are only exempt from paying the general excise tax on certain income which they receive.

12. Some foreign diplomats and consular officials are issued special cards by the U.S. Department of State which grant them an exemption from paying state sales taxes. Does this exemption also apply to the general excise tax when they buy goods and services?

Yes, beginning July 1, 2000, sales to foreign diplomats and consular officials issued sales tax exemption cards are exempt from the general excise tax. The diplomat or consular official must present the card at the time of purchase. The diplomat or consular official must present the card at the time of purchase, and the business must keep records (e.g., a copy of the card) to substantiate their exemption claim. There may be limitations indicated on the card as to what items or services may be purchased tax exempt and the cards have an expiration date. The United States Department of State has authorized the issuance of tax exemption cards by the American Institute of Taiwan. Holders of cards issued by this organization also qualify for the tax exemption.

13. In some states, sellers will not charge that state's sales tax if the customers can prove that they are out-of-state residents or, in some cases, show a sales tax exemption certificate for out-of-state residents issued by that state's tax office. Are out-of-state residents exempt from paying the general excise tax on goods and services purchased in Hawaii?

There is no general excise tax exemption for goods and services purchased in Hawaii by out-of-state residents. As a result, the Department of Taxation also does not issue tax exemption certificates to tourists or other nonresidents in Hawaii.

14. If an out-of-state buyer comes to Hawaii, orders goods from a Hawaii seller, and then has the seller ship the goods out of Hawaii, is the sale subject to the general excise tax?

Whether the sale is taxable or not depends on the facts and circumstances regarding that transaction.

IF the buyer selects the goods and enters into an agreement with the seller for the delivery of the goods at a location outside Hawaii, and if the goods will be shipped at the seller's risk and expense (although the seller may add an additional charge to cover the shipping and handling expenses), then the sale is not subject to the general excise tax.

EXAMPLE 1 - Tourist T from California comes to Hawaii and selects a large vase from Business F. Rather than risk breaking the vase during travel, T has F pack and deliver the vase to T's home for an additional shipping and handling charge, with the assurance that F will replace the vase if it is lost or damaged in shipping. F is not subject to the general excise tax on the gross income from this sale.

IF the buyer purchases the goods from a seller in Hawaii and leaves the store with the purchased goods, then the sale is subject to the general excise tax even if the buyer subsequently ships the goods to a location outside Hawaii.

EXAMPLE 2 - Tourist U from Japan comes to Hawaii and purchases souvenirs from Business G. G puts the purchased souvenirs in a bag and gives them to U. G is subject to the general excise tax on the gross income from this sale.

It is easy to see why people confuse the Hawaii general excise tax with sales tax. As the questions and answers above demonstrate, however, the general excise tax is quite different from a sales tax, and an understanding of the unique nature of the general excise tax is necessary if one is to understand how the tax applies in various situations as well as its role in Hawaii's tax structure and economy.

Additional information about the general excise tax is available in the brochure entitled An Introduction to the General Excise Tax. This brochure may be requested from any of our district tax offices. Information on consumer issues regarding the visible passing on of the general excise tax may be obtained by calling the Office of Consumer Protection on Oahu at (808)587-3222.

Tax Facts is a publication of the Department of Taxation on tax subjects of current interest and is not intended to be a complete statement of the law. Subsequent developments in the law (legislation, rules, cases, etc.) should be consulted.

**For More Information Contact: Taxpayer Services at 587-4242, e-mail to
Taxpayer_Services@tax.state.hi.us, or www.state.hi.us/tax**