White Paper –
GET, TAT & TOT Requirements for Homeowner Associations

4/11/16

Introduction

This White Paper deals with the **Hawaii General Excise Tax ("GET"), Hawaii Transient Accommodations Tax ("TAT")** and the **Hawaii Time-Share Occupancy Tax ("TOT")** as it relates to Homeowner Associations. These three taxes are based on gross income or receipts. In other words, they are separate and distinct from the Hawaii income tax which is based on the net income.

Hawaii GET – It is Not a Sales Tax

Referring to the GET as a sales tax is wrong. The GET is an excise tax, not a sales tax. A sales tax is a direct tax imposed by a State on the final consumer. For example, a consumer purchasing $100 worth of groceries in California would be subject to a 7.5% sales tax, for a total charge to the consumer of $107.25. In effect, the business collecting the $7.25 sales tax is acting as an "agent" of California and is obligated to pay the $7.25 to the State.

Hawaii's excise tax is currently 4.0% of the gross income (before any deductions). It is 4.5% in Honolulu to pay for the new rapid transit system currently under construction. It is an indirect tax and is imposed on all levels of business – from importer to wholesaler to retailer and to the final consumer at different tax rates. The entity responsible for paying the tax to the State is the business and not the final consumer. The law provides that if the business so chooses it can pass on the excise tax to the final consumer at a maximum rate of 4.166%

The Tax Foundation of Hawaii has stated that if Hawaii's excise tax were to be replaced by a sales tax it would have to be at least 12% to remain revenue neutral. When viewed in this context one can see how insidious this tax really is. Hawaii would have the "distinction" of having the highest sales tax in the nation.

Hawaii GET – What is Subject to Tax

Sources of homeowner association revenues subject to the GET:

- Interest;
- Fines for house rule violations;
- Guest services/registration fees;

- Late fees on delinquent assessments;
- Laundry and vending machine income (washer/dryer, soda/candy machines);
- Rental income, i.e. use of common areas, storage, association owned unit(s);
- Retail sales;
- Transfer fees charged to new owners;
- Wi-Fi usage charges.

Hawaii GET – What is Not Subject to Tax

The only exemptions to the GET are those stated in the law and court rulings. For homeowner associations the following are exempt from the GET.

- Dividends from mutual insurance companies;
- Direct reimbursements
- Donations;
- Maintenance fees, replacement reserves and special assessments;
- Sale of leased-fee interests;
- Sub-metering of utilities, such as electricity and water, to unit owners.

Hawaii TAT and Act 204

The TAT, currently at 9.25%, is a tax on the gross income received for the furnishing of transient accommodations. It is imposed on the operator, defined as the person or entity who actually furnishes the transient accommodations.

Act 204 requires that the TAT number and local contact information must be displayed in all advertisement. This includes print, social media, websites, internet, TV, etc. This is serious because the fine per violation, after a first warning, is:

- $500/day for a first violation;
- $1,000/day for a second violation; and
- $5,000/day for a third violation.

The Hawaii Dept. of Taxation has publicly stated that it intends to use Act 204 to increase GET and TAT compliance through education and enforcement. The Department will use information from advertisements to identify noncompliant operators. The Department expects cooperation from websites (transient accommodations brokers) due to the potential imposition of fines. Remember, the operator and not the owner is responsible for paying the TAT.

How to Calculate the GET and TAT Amounts Owed to the State

The calculation necessary to separate the GET and TAT is required because the GET is based on gross income including the GET and the TAT is a straight pass-thru from the guest to the State. Assuming that the gross income from a vacation rental is $10,000/year, the separation of the two taxes would be done as follows:

$10,000.00	Gross base rental income charged to guest
416.60	Add GET tax at the maximum rate of 4.166%
925.00	Add TAT tax at 9.25%
$11,341.60	Total paid by guest
(925.00)	Subtract the TAT.
$10,416.60	Total gross income subject to GET
x 4.0%	GET tax rate
$ $416.66	GET owed to the State*

Please note that the TAT is $925.00 ($10,000 x 9.25%).

Some would argue that the GET is a tax on a tax. It is not by virtue of the fact that the GET is not a sales tax (imposed on the consumer) but an excise tax (imposed on the business' gross income).

Hawaii TOT

The time-share occupancy tax applies whenever an interval unit is occupied, regardless of whether it is owner-occupied, non-paying guest, or rented. The TOT rate is 8.25% for 2016. It increases to 9.25% beginning 1/1/17. This brings it to the same rate at the TAT.

When an interval unit is occupied the TOT is based on the daily fair market rental value which is defined as 50% of the gross maintenance fees for the time-interval period. To illustrate this point, assume that the annual maintenance fee is $1,000/interval and the interval owner uses the unit for 7 days:

Calculation of the daily fair market rental value:
$1,000 M/F ÷ 7 days = $142.86 x 50% = $71.43/day

Calculation of TOT:
$71.43/day x 7 occupied days = $500.01 x 8.25% = $41.25 TOT

Form TA-42, *Time share Occupancy Worksheet – Calculation of Total Fair Market Rental Value*, can be used to guide you in the calculation of the TOT. It is only a worksheet and should not be filed with the TOT

Forms and Licenses for the GET, TAT & TOT

The Hawaii Form BB-1, *Basic Business Application*, is used to apply for the GET, TAT and TOT. The State has a fillable form at http://files.hawaii.gov/tax/forms/2015/bb1packet.pdf. The forms needed to file the taxes are:

- GET. Form G-45, *Periodic General Excise/Use Tax Return*.
- GET Form G-49, *Annual Return & Reconciliation of General Excise/Use Tax Return*.
- TAT Form TA-1, *Periodic Transient Accommodations Tax Return*.
- TAT Form TA-2, *Transient Accommodations Tax Annual Return & Reconciliation*.
- The TOT forms are the same as the TAT forms described above.

Please feel free to contact us if you have any questions or comments concerning this article.

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