



STATE OF HAWAII — DEPARTMENT OF TAXATION
**General Excise/Use Tax Exemption For Certified or
Approved Housing Projects**
(Section 46-15.1 or 201H-36, Hawaii Revised Statutes (HRS))

Amended

| | | | | |
|----------------------|--|-------------------|---|------------------------------|
| PRINT OR TYPE | Name of individual, trust, estate, partnership, association, company, or corporation | | Hawaii Tax Identification No. GE _____ - _____ - _____ - _____ | |
| | Name under which business is operated | | Type of Business/Service | |
| | Business address (Number and Street) | | Contract Amount \$ | |
| | City, Island | Postal / Zip Code | ED Code 100 Amount \$ | Amount of Tax Exempted \$ |
| | Project Name | | Contract Number | Contract Effective Date |
| | Project Address | | Tax Map Key Number | |

The entity indicated above is contractually participating (Check the appropriate blocks to complete this sentence.)

in the (check applicable)

being developed by a (check one)

pursuant to (check one)

- planning
- design
- financing

- construction
- sale
- rental of affordable units

- non-profit entity
- limited distribution mortgagor
- private developer
- public agency

- Section 46-15.1, HRS
- Section 201H-36, HRS
- Act 39, SLH 2018 (Sec. 201H-36(a)(5), HRS)

The entity indicated above will import property, services, or contracting from the unlicensed sellers identified in Schedule A for use specifically related to the above-named project. The landed value of the imported property, services, or contracting is \$ _____ and is excluded from the imposition of the use tax pursuant to section 238-3(j), HRS. (Attach Schedule A.)

DECLARATION

I declare under the penalties set forth in section 231-36, HRS, that this exemption and attached schedules, if any, are prepared in accordance with the provisions of section 46-15.1 or 201H-36, HRS, and the rules issued thereunder. It is further understood that the misuse of this exemption will lead to its revocation and/or the imposition of penalties provided by law.

| | | |
|--|--|---------------|
| _____ Signature of Taxpayer or Authorized Agent | _____ Contact Phone Number | _____ Date |
| _____ Type or Print Name | _____ Type or Print Title (Owner, Partner or Member, Officer, or Duly Authorized Agent) | |

See the reverse side for filing instructions

CERTIFICATION

This is to certify that the entity indicated above is contractually participating in the above mentioned project.

| | | |
|--|--|---------------|
| _____ Signature of Certifying Officer | _____ Certified | _____ Date |
| _____ Type or Print Name and Title | _____ Name of Certifying County or State Agency | |

Changes to Note:

Act 39, Session Laws of Hawaii 2018 – This act amends section 201H-36, HRS, to include contracts that are approved or certified from July 1, 2018 to June 30, 2030, and developed under a contract described in section 104-2(i)(2) by a qualified person or firm to provide affordable rental housing through new construction or substantial rehabilitation. The allowable general excise and use tax costs have been changed from \$7,000,000 to \$30,000,000 per year in the aggregate and shall apply to contracting only. The amendments made to section 201H-36, HRS, apply retroactively to taxable years beginning after December 31, 2017.

GENERAL INSTRUCTIONS

1. General Rule. A qualified entity receiving gross income for the planning, design, financing, construction, sale or lease in the State of a housing project which has been certified or approved under section 46-15.1 or 201H-36, HRS, may file a General Excise/Use Tax Exemption For Certified or Approved Housing Projects (Form G-37). A qualified entity shall file a separate Form G-37 for each housing project for which this exemption is approved by HHFDC or any of the respective counties.

A qualified entity importing any property, services, or contracting to be used in a certified or approved housing project may file Form G-37.

The HHFDC or any of the respective counties may certify for exemption from general excise taxes any qualified entity involved with a newly constructed or rehabilitated project development under section 46-15.1 or 201H-36, HRS.

2. When to Prepare Form G-37. Qualified entities shall prepare Form G-37 upon final execution of the contract for construction or moderate or substantial rehabilitation of an eligible housing project and submit Form G-37 with the required supporting documentation (see chapter 15-306, Hawaii Administrative Rules (HAR) for more information) to HHFDC or the respective county for certification. A cumulative list of licensed suppliers and subcontractors is to be submitted by the developer or general contractor with Form G-37. Inclusion of a supplier or subcontractor on this list will not serve to certify the listed supplier or contractor for the exemption. The developer or general contractor of an eligible housing project shall also submit Forms G-37 on behalf of all subcontractors, material houses, real estate sales agencies, and other entities involved with the planning, design, financing, construction, or sale of the housing project to HHFDC or the respective county for certification.

3. Where to File Form G-37. Submit this form to the certifying agency for approval. After certification by HHFDC (677 Queen Street, Suite 300, Honolulu, HI 96813) or the respective county, the certifying agency will file the original copy of Form G-37 with the Oahu Office Audit Branch Chief. A copy will be retained by the governmental agency certifying or approving the housing project, and a copy will also be given to the qualified entity for its records.

4. Exemption from the General Excise Tax (GET). The exemption shall be claimed on the general excise tax return under column b and in Part I on Schedule GE (Form G-45/G-49), Schedule of Exemptions and Deductions, attached to the tax return.

The contractor shall also report the amounts paid to subcontractors doing contracting work as defined in section 237-6, HRS, as a subcontractor exemption in column b and on Schedule

GE Parts I and III. The subcontractor shall then report the amount they receive from the general contractor on their GET returns and claim an exemption in column b and Schedule GE, up to the amount approved by HHFDC on the G-37 with the subcontractor/material supplier's name on it.

For example: *The general contractor receives a certified Form G-37 from HHFDC for:*

- Contract amount - \$100,000
- ED Code 100 Amount - \$60,000
- Amount of Tax exempted - \$2,400

Of the \$100,000 the general contractor receives for the contract from his customer, he pays his subcontractors \$40,000. The general contractor is to submit a separate Form G-37 for each of his licensed subcontractors that are working on this project. The general contractor should file his G-45/G-49 returns reporting \$100,000 as gross contracting income in column a and \$100,000 as an exemption in column b. On Schedule GE, the general contractor should report \$60,000 in Part I P210/100, \$40,000 in Part I P210/148, and complete Part III with the required subcontractor information.

The subcontractor should report the amount they receive from the general contractor, \$40,000 as gross contracting income on their G-45/G-49 returns and claim an exemption for the certified G-37 amount in column b and on Schedule GE Part I P210/100.

5. Contract vs. ED Code 100 Amount. Enter the total contract amount in the space provided. Enter in the space provided "ED Code 100 Amount," the amount of the total contract which is qualified under section 237-29, HRS, or 238-3(j), HRS, and chapter 15-306, HAR, that you are requesting an exemption for. This amount should not include amounts paid to subcontractors doing contracting work as defined in section 237-6, HRS, or registered specialty contractors. In addition, equipment or tools that are purchased by the contractor for use during the contract and retained by the contractor as the contractor's assets do not qualify as exempt for general excise tax purposes. Section 15-306-2, HAR defines "allowable construction costs" to mean:

[E]xpenses 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 that are associated with the residential portion of the project, or that are incidental or de minimis nonresidential uses within the project.

If the full approved exemption amount is not used on the exempt project, the exemption is limited to the amount actually used on the project.

6. Amount of Tax Exempted. Enter the amount of tax that you are requesting an exemption for that qualifies under section 237-29, HRS.

7. Exclusion from the Use Tax. The use tax is meant to complement the general excise tax. The use tax is an excise tax on the use in Hawaii of imported property, services, or contracting purchased from one who is not licensed to do business in Hawaii.

The use of any property, services, or contracting related to the certified or approved housing project is not subject to the use tax. The exemption applies to the property, services, or contracting purchased from an unlicensed seller for a qualified project. If the full exemption amount is not used on the exempt project, the exemption is limited to the amount actually used on the project.

If the qualified entity is importing any property, services, or contracting for use in the certified or approved housing project from an unlicensed vendor, the qualified entity must complete Schedule A, List of Unlicensed Suppliers and Subcontractors. If a business on this list is determined by the Department of Taxation to be subject to general excise tax on any part of the purchase listed by the qualified entity, the unlicensed seller may use a copy of this Schedule A as evidence of exemption certification of the sale to the qualified entity of property, services, or contracting qualifying for the exemption under sections 237-29 and 238-3(j), HRS. This deemed certification is subject to verification by the Department of Taxation. The qualified entity may prepare and submit a separate Schedule A for each unlicensed supplier or subcontractor, if the entity anticipates providing a copy of the certification to the unlicensed seller and doesn't want to disclose its purchases from other sellers.

8. Failure to File Form G-37. The certified Form G-37 must be first filed with the Oahu Office Audit Branch Chief, otherwise, any amount claimed on the general excise tax return as an exemption under section 237-29, HRS, shall be disallowed.

9. Section References. The pertinent parts of sections 46-15.1 and 201H-36, HRS, referred to above are as follows:

§46-15.1 Housing; county powers. (a) Any law to the contrary notwithstanding, any county shall have and may exercise the same powers, subject to applicable limitations, as those granted the Hawaii housing finance and development corporation pursuant to chapter 201H insofar as those powers may be reasonably construed to be exercisable by a county for the purpose of developing, constructing, and providing low-and moderate-income housing; . . . provided further that county projects shall be granted an exemption from general excise or receipts taxes in the same manner as projects of the Hawaii housing finance and development corporation, pursuant to section 201H-36;

§201H-36 Exemption from general excise taxes. (a) In accordance with section 237-29, the corporation may approve and certify for exemption from general excise taxes any qualified person or firm involved with a newly constructed, or moderately or substantially rehabilitated project:

(b) To obtain certification for exemption under this section, rental housing projects shall, unless exempted by the corporation, enter into a regulatory agreement with the corporation to ensure the project's continued compliance with the applicable eligibility requirements set forth in subsection (a),

(c) All claims for exemption under this section shall be filed with and certified by the corporation and forwarded to the department of taxation. Any claim for exemption that is filed and approved, shall not be considered a subsidy for the purpose of this part.

10. Changes to previously filed Form G-37s. If your contract for work on a qualified project experiences substantial changes, you must file an amended Form G-37 with the agency that certified your original submission. This amended Form G-37 must include the full amounts of the contract and marked amended by checking the amended box. A revised Schedule A must also be submitted, if applicable. "Substantial change" means that the change is more than 20% of the original contract amount or the change is more than \$200,000.