

STATE OF HAWAII - DEPARTMENT OF TAXATION
INSTRUCTIONS FOR FORM G-72
SUBLEASE DEDUCTION WORKSHEET

CHANGES TO NOTE

Deduction Suspension - Effective July 1, 2011 through June 30, 2013, Act 105, SLH 2011 suspends the general excise tax (GET) deduction known as the "sublease deduction" provided under Hawaii Revised Statutes (HRS) §237-16.5. The previously exempt income is now subject to the GET at the rate of 4%. The suspension does not apply to written leases entered into prior to July 1, 2011 that do not permit the passing on of increased rates of taxes. For more information, see Tax Announcement Nos. 2011-09, 2011-10, and 2011-22. The sublease deduction for the City and County of Honolulu (Oahu) county surcharge known as the "additional sublease deduction" is not affected and you may continue to deduct these amounts from your gross receipts subject to the Oahu county surcharge.

Schedule GE-1 - Any taxpayer who is claiming the sublease deduction and/or the additional sublease deduction for tax years 2010, 2011, and/or 2012 is required to file Schedule GE-1 online at www.ehawaii.gov/efile. Schedule GE-1, the online survey, is different from Schedule GE, the schedule of exemptions and deductions. For more information, see Department of Taxation Announcement No. 2011-26 and the Schedule GE-1 instructions.

GENERAL INSTRUCTIONS

HRS §237-16.5 allows a GET deduction ("sublease deduction") to a taxpayer who leases real property from a lessor, and who subsequently subleases that same real property to a sublessee. If that same real property is located on Oahu, an additional GET county surcharge deduction ("additional sublease deduction") is also allowed. The deduction amounts cannot exceed the total amount received from the sublease of that same real property. Use this worksheet to compute the sublease deduction and if applicable, the additional sublease deduction. Failure to meet the following requirements will result in the disallowance of the deduction(s):

- (1) The lessor and lessee must be licensed and taxable on the gross proceeds or gross income received under a written lease of real property under the GET Law;
- (2) The lessee must obtain Form G-71, General Excise Sublease Deduction Certificate, from the lessor;
- (3) The lessee must report the sublease deduction amount, and the additional sublease deduction amount (if any) on Form G-45, Form G-49, and Schedule GE (Form G-45/G-49);
- (4) The lessee's sublease deduction is limited to leases and subleases in writing and related to the same real property or space;
- (5) The lessee must compute the allocations with no allowances for changes during the specified term of the sublease, provided that this requirement shall not apply to a lease with terms that vary in the amount of periodic rent due, including a percentage lease with fixed minimum rent, a percentage lease with no minimum rent, a combination percentage lease with fixed minimum rent or percentage leases with no minimum rent, whichever amount is higher, or a graduated or step-up lease; and

(6) The lessee must retain records of the lessor's name, general excise Hawaii tax identification number (Hawaii Tax I.D. No.), and the amounts paid to the lessor.

For purposes of the sublease deduction:

Lease means the rental of real property under an instrument in writing by which one conveys real property for a specified term and for a specified consideration, and includes the written extension or renegotiation of a lease, and any holdover tenancy.

Lessee means one who holds real property under a lease, and includes a sublessee. A lessee or sublessee includes a sublessor who is subject to the GET and qualifies for the deduction under HRS §237-16.5 provided the real property or space is conveyed by a written sublease.

Lessor means one who conveys real property by a lease, and includes a sublessor. A lessor does not include a person who is not subject to the taxes imposed by chapter 237, HRS, or a person whose gross proceeds or gross income from leasing the real property or space is not taxable under chapter 237, HRS.

Sublessee means one who holds real property under a sublease.

Sublessor means one who conveys real property by a written sublease, is subject to the GET on the gross rental receipts derived from the subletting of such real property, and qualifies for the deduction under HRS §237-16.5.

For more information, see Hawaii Administrative Rules §18-237-16.5.

SPECIFIC INSTRUCTIONS

Use Part I to compute the sublease deduction. For Oahu property leases, use Part II to compute the additional sublease deduction (if any). Use a separate worksheet for each real property or space for which you are claiming a deduction. Retain Form G-72 for your records.

The deduction(s) must be reported on Form G-45, Form G-49, and Schedule GE in order to be properly claimed. For tax years 2010-2012, the deduction(s) must also be reported on the online survey, Schedule GE-1.

REAL PROPERTY ALLOCATION

If you sublease less than 100% of the real property or space that you leased from the lessor, you must allocate the total amount of rent you paid for that real property or space based upon the percentage of the real property or space subleased, or the fair rental value of the real property or space subleased. The allocation may be based upon the percentage of the real property or space subleased when it is reasonable under the circumstances. If an allocation based upon the percentage of the real property or space subleased is not reasonable under the circumstances, you must allocate the total amount of rent you paid for the real property or space subleased based upon the fair rental value.

Example A: Lessor A leases real property X to lessee B for \$1,000 a year, and lessee B subleases the same real property X to sublessee C for \$2,500 a year. Since lessee B subleases 100% of real property X to sublessee C, lessee B would enter \$1,000 on line 1.

Example B: Lessor A leases real property X to lessee B for \$1,000 a year, and lessee B subleases 50% of real property X to sublessee C for \$2,500 a year. Assuming there are no significant differences between the portion of X subleased by B and the portion not being subleased which would significantly affect the value of the respective portions of X, an allocation based upon the percentage of area of X being subleased would be reasonable. In this case, lessee B would enter \$500 (\$1,000 rent paid to lessor A x 50%) on line 1.

Example C: Lessor A leases real property X to lessee B for \$1,000 a year. Real property X constitutes ground floor retail real property or space (which has a rental value of \$800) and upper floor office real property or space (which has a rental value of \$200) equal in size to the ground floor retail real property or space under lease. Lessee B subleases only the upper floor real property or space to sublessee C for \$2,500 a year. An allocation based upon the percentage of area of X being subleased would not be a reasonable allocation method under these circumstances. An allocation based upon the fair rental value of X would be reasonable. In this case, lessee B would enter \$200 (the portion of the \$1,000 rent paid to lessor A allocable to the upper floor real property or space) on line 1.

PART I - Computation of the Sublease Deduction

Line 1 – Enter the amount of rent you paid to the lessor for the real property or space leased. If you sublease less than 100% of the real property or space that you leased from the lessor, see the “Real Property Allocation” section above.

Line 2 – The allowable rate to be used in computing the deduction for calendar year 2004 and thereafter is 0.875.

Line 3 – Multiply line 1 by line 2.

Line 4 – Enter the amount of rent you received from the sublease of the same real property or space. Include this amount in Part II, Column a on Form G-45 and on Form G-49, for Transient Accommodations Rentals or Other Rentals, as applicable.

Line 5 – Enter the lesser of line 3 or line 4.

Line 6 – Check the appropriate box and enter the result.

• If your deduction is suspended under Act 105, SLH 2011, check the box for “Yes” and enter zero on line 6. You cannot claim the deduction from July 1, 2011 through June 30, 2013. The suspension does not apply to written leases entered into prior to July 1, 2011 that do not permit the passing on of increased taxes. For more information, see Department of Taxation Announcement No. 2011-10. If this is for an Oahu property lease, skip line 7 and go to line 8.

• If your deduction is not suspended under Act 105, SLH 2011, check the box for “No” and enter the amount from line 5 on line 6. This is your sublease deduction. Include this amount in Part II, Column b on Form G-45 and on Form G-49 for Transient Accommodations Rentals or Other Rentals, as applicable, and on Schedule GE (Form G-45/G-49). If this is for an Oahu property lease, go to line 7.

PART II - Computation of the Additional Sublease Deduction (For Oahu Property Leases Only)

If this is not for an Oahu property lease, do not complete Part II. You cannot claim an additional sublease deduction for the Oahu county surcharge. Use line 7 to calculate the deduction for an Oahu property lease that is not subject to Act 105, SLH 2011. Use lines 8a - 8c to calculate the deduction for an Oahu property lease that is subject to Act 105, SLH 2011. If you are claiming an additional sublease deduction, report it in Part IV, Column b on Form G-45 and on Form G-49, and on Schedule GE (Form G-45/G-49).

Line 7 – Check the appropriate box and enter the result for your Oahu property lease that is *not* subject to Act 105. Do not continue on to line 8.

• If line 1 (i.e., the rent you paid) is less than or equal to line 4 (i.e., your rental income), check the box for “Yes” and enter the result of line 1 minus line 6 on line 7. This is your additional sublease deduction.

• If line 1 is greater than line 4, check the box for “No” and enter zero on line 7. You do not have an additional sublease deduction. The deduction cannot exceed the rent that you paid.

Line 8a – Enter the amount from line 5.

Line 8b – If line 1 (i.e., the rent you paid) is less than or equal to line 4 (i.e., your rental income), enter the result of line 1 minus line 5 on line 8b. If line 1 is greater than line 4, enter zero.

Line 8c – Add lines 8a and 8b. This is your additional sublease deduction for an Oahu property lease that is subject to Act 105.

WHERE TO GET INFORMATION

More information is available on the Department’s website at www.hawaii.gov/tax or you may contact a customer service representative on Oahu at 808-587-4242 (or toll-free at 1-800-222-3229), or via e-mail at Taxpayer.Services@hawaii.gov.