

Sales/Use:

Hawaii General Excise Tax and Use Tax are Not Expressly Preempted by Foreign Trade Zone Act

Opinion No. 21-01, Haw. Dept. of Atty. Gen. (9/22/21). Responding to a request for clarification as to whether the Foreign-Trade Zones Act of 1934, codified as amended at 19 USC. § 81a-81u (2016) (FTZ Act), preempts Hawaii from imposing general excise and use tax on activity conducted within a foreign-trade zone, a Hawaii Attorney General opinion concludes that Hawaii's general excise tax and use tax are *not* expressly preempted by the FTZ Act. In doing so, the opinion explains that in 1984, Congress amended the FTZ Act to specify that only state and local ad valorem taxes on imported and domestic goods held for export are preempted. Under this reasoning, the opinion explains that Hawaii's general excise tax is not an ad valorem tax, as it is imposed once on a transaction and is measured "by the income realized by the particular activity engaged in by the taxpayer within the state." Similarly, Hawaii's use tax, which is complementary to the general excise tax, "is not an ad valorem tax, as it is imposed once upon the import of the tangible personal property" into Hawaii. Please contact us with any questions.

URL: <https://ag.hawaii.gov/wp-content/uploads/2021/09/ag-op-no-2021-01.pdf>

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