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January 12, 1995

The Honorable Ray K. Kamikawa  
Director of Taxation  
State of Hawaii  
830 Punchbowl Street, Room 221  
Honolulu, Hawaii 96813

Dear Mr. Kamikawa:

Re: Sufficiency of Payment Plan as Basis for Liquor  
License Renewal

By letter dated October 17, 1994, your predecessor, Richard F. Kahle, Jr., requested our opinion on whether a taxpayer's agreement to pay its delinquent taxes pursuant to a payment schedule satisfies the statutory requirements for liquor license renewal.

I. BRIEF ANSWER

It is our opinion that a taxpayer's agreement to pay its delinquent taxes, pursuant to a payment schedule, does not satisfy the requirements for liquor license renewal under Hawaii Revised Statutes (HRS) §§ 281-45 (1994) and 231-28 (1985). HRS §§ 281-45 and 231-28 require, as a condition of liquor license renewal, that an applicant obtain a certificate from the Director of Taxation showing that the applicant does not owe state taxes.

II. FACTS

In the present case, the taxpayer owed delinquent state taxes and agreed to pay its delinquent taxes, in installments, over a six-month period.

Thereafter, the taxpayer sought to renew its liquor license with the Department of Liquor Control for the County of Hawaii. As a condition of liquor license renewal, Hawaii law requires the

applicant to obtain a certificate from the Director of Taxation showing that the applicant does not owe state taxes. See HRS §§ 281-45 and 231-28. The Department of Taxation informed the Department of Liquor Control of the taxpayer's payment schedule, but stated that its letter confirming the payment schedule did not constitute a tax clearance certificate.

The Corporation Counsel for the County of Hawaii (Corporation Counsel) opined, however, that the taxpayer's payment plan satisfied the statutory requirements of HRS § 281-45 and that the Department of Liquor Control could properly renew the taxpayer's liquor license. We disagree.

### III. DISCUSSION

HRS §§ 281-45 and 231-28 govern the issuance and renewal of liquor licenses. HRS § 281-45 provides in relevant part that:

No license shall be issued under this chapter:

. . . .

- (3) Unless the applicant for a license or a renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency a signed certificate from the director of taxation and from the Internal Revenue Service showing that the applicant or the transferor and transferee do not owe the state or federal governments any delinquent taxes, penalties, or interest[.]

Similarly, HRS § 231-28 provides as follows:

Tax clearance before procuring liquor licenses. No liquor licenses shall be issued or renewed unless the applicant therefor shall present to the issuing agency, a certificate signed by the director of taxation, showing that the applicant does not owe the State any delinquent taxes, penalties, or interest.

It is a cardinal rule of statutory interpretation that where the terms of a statute are plain, unambiguous, and explicit, the court is not at liberty to look beyond that language for a different meaning. Kaapu v. Aloha Tower Dev. Corp., 74 Haw. 365, 380, 846 P.2d 882, 888-89 (1993) (citation omitted). Instead, the court's sole duty is to give effect to the statute's plain

and obvious meaning. AIG Haw. Ins. Co. v. Estate of Caraang, 74 Haw. 620, 633-34, 851 P.2d 321, 328 (1993) (citation omitted).

The plain language of HRS §§ 281-45 and 231-28 is clear, unambiguous, and explicit. To qualify for a liquor license issuance or renewal, the taxpayer must provide a certificate, signed by the Director of Taxation, showing that the applicant does not owe the State any delinquent taxes, penalties, or interest. "Delinquent taxes" are "[p]ast due and unpaid taxes." Black's Law Dictionary 385 (5th ed. 1979).

In the present case, the taxpayer owed the State past due and unpaid taxes, penalties, and interest. To facilitate the collection of the delinquent taxes, the Department of Taxation entered into an "Installment Plan Agreement" with the taxpayer that allowed the taxpayer to pay its delinquent taxes in installments over a six-month period.

The payment plan provides the taxpayer with an additional period of time to pay its delinquent taxes and, during that period, the Department of Taxation agrees not to pursue any further collection action as long as the taxpayer complies with the terms of the plan. The payment plan is made under the general collection powers of the Department of Taxation. There is no statute that specifies the effect of the existence of a payment plan and the long-standing and consistent interpretation and practice of the Department of Taxation has been and continues to be that the payment plan has no effect on the delinquent status of the taxes.<sup>1</sup>

The taxpayer continues to owe its past due and unpaid taxes until its outstanding tax liability is paid in full. Thus, the taxpayer's agreement to pay its delinquent taxes pursuant to a payment plan does not, in itself, satisfy the taxpayer's outstanding tax liability. Furthermore, it does not change the

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<sup>1</sup>The Department of Taxation's authority to affect the status of a delinquent tax is limited by statute. HRS § 231-3(10) (Supp. 1992) allows the Department of Taxation, with the approval of the Governor, to compromise any claim arising under any tax law within the scope of its administration and HRS § 231-3(12) (Supp. 1992) permits the Department of Taxation to remit any amount of penalties or interest added to any tax under its administration that is delinquent for not more than ninety days.

status of the taxes due as delinquent taxes. Accordingly, the Department of Taxation properly refused to issue a tax clearance certificate to the taxpayer. Without the tax certificate, the Department of Liquor Control could not legally renew the taxpayer's liquor license under HRS §§ 281-45 and 231-28.<sup>2</sup>

The Corporation Counsel reasoned that the statutory requirements for liquor license renewal were met because the payment plan allowed the State to collect its taxes and, thus, satisfied the legislative intent of HRS §§ 281-45 and 231-28. However, the legislative history of these statutes indicates that in drafting HRS §§ 281-45 and 231-28, the Hawaii State Legislature was concerned, foremost, with the actual payment of delinquent taxes, not merely an agreement to pay.

HRS § 281-45 was enacted by the legislature in 1933. The original version of the statute incorporated section 1958 of the 1925 Revised Laws of Hawaii. See Act 40, § 26, 1933 Haw. Spec. Sess. Laws 52, 65. Section 1958 provided that:

No license shall be issued by any county or city and county treasurer, unless the applicant for such license shall have filed with such treasurer a certificate showing the payment in full of all delinquent taxes, if any shall have become delinquent, after the passage of this chapter, but not including, however, any taxes delinquent prior to January 1, 1915.

Rev. Laws Haw. § 1958 (1925) (emphasis added).

An earlier version of section 1958 withstood constitutional challenge in In re Kalana, 22 Haw. 96 (1914). In Kalana, an applicant for a driver's license challenged the constitutionality of Act 99, Session Laws of Hawaii 1913.<sup>3</sup> The Hawaii Supreme

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<sup>2</sup>We note, however, that under the Bankruptcy Code (11 U.S.C.), the issuing agency may not condition the renewal of a liquor license of a debtor operating under the protection of the Bankruptcy Court upon the payment of pre-petition state tax delinquencies. In re Steven Paul Lauryn, Case No. 92-00790 (U.S. B. Ct. D. Haw. July 23, 1993)0

<sup>3</sup>Act 99 provided in relevant part that, "no license shall be so issued until the applicant therefor shall have filed with the Treasurer of the County or City and County a certificate showing the payment in full of all taxes due from said applicant on the date of said application." Act 99, 1913 Haw. Sess. Laws 140,

Court held, inter alia, that Act 99 was a constitutional exercise of the legislature's power of taxation.<sup>4</sup> Id. at 101.

Significantly, the court noted that:

[T]he obligation of the citizen to pay his taxes is regarded as a continuing public duty which is discharged only by their payment. This statute . . . can only be said to require that one who applies for a license after the taking effect of the act shall discharge his existing obligation to the Territory by paying all taxes due as a condition precedent to the issuing of the license.

Id. at 104-05 (citations omitted and emphases added).

The Hawaii Supreme Court also stated that "under the plain language of the act the proviso applies to county licenses as well as territorial licenses and that all taxes due, including those delinquent at the time of the passage of the act, must be paid before the license can issue." Id. at 110 (emphasis added).

In addition, in discussing a 1982 amendment of the statute, the legislative committee explained:

Under present law, applicants must present a certificate to the liquor Commission issued by the Department of Taxation, certifying payment of all State taxes. This bill would extend that requirement to include a certificate from the Internal Revenue Service.

H. Stand. Comm. Rep. No. 496-82, Haw. H.J. 1116 (1982) (emphasis added).

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140-41.

<sup>4</sup>We, note, that Act 99 was later declared void by the Hawaii Supreme Court in Territory v. Kua, 22 Haw. 307 (1914), on other grounds. In Kua, the court held that Act 99 was void because its title was misleading and the Act violated section 45 of the Organic Act which required that "each law shall embrace but one subject[.]" Id. at 312, 316.

Similarly, in enacting HRS § 231-28, the legislative committee stated that it was "in accord with the purpose of the bill feeling that no one should secure the specific privilege of a license from government without paying his taxes[.]" S. Stand. Comm. Rep. No. 287, Haw. S.J. 992 (1949).

Thus, legislative history and case law show that the legislature's primary concern in enacting HRS §§ 281-45 and 231-28 was the payment of delinquent taxes as a "condition precedent" to the issuing or renewal of a liquor license.

In the present case, the Corporation Counsel concluded that an installment payment plan allowed the State to collect its delinquent taxes, satisfying the legislative intent of HRS §§ 281-45 and 231-28. However, no statute, rule or administrative practice of the Department of Taxation has ever equated a taxpayer's payment plan with the actual payment of the delinquent taxes and courts give deference to such administrative practice and interpretation. Aio v. Hamada, 66 Haw. 401, 407, 664 P.2d 727, 731 (1983). Although a taxpayer may agree to make periodic payments on its delinquent taxes, there is no guarantee that these payments in fact, will be made. Therefore, a taxpayer's agreement to make installment payments on its delinquent taxes does not satisfy the legislative intent of HRS §§ 281-45 and 231-28.

#### IV. CONCLUSION

It is our opinion that a taxpayer's promise to pay its delinquent taxes pursuant to a payment schedule satisfies neither the statutory requirements for liquor license issuance or renewal under HRS §§ 281-45 and 231-28, nor the legislative intent of these statutes.

Very truly yours,

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APPROVED:

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