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December 21, 2017

Via e-mail and U.S. Mail

Ted Shiraishi, Rules Officer
Jacob Herlitz, Administrative Rules Specialist
Department of Taxation
Room 219, Princess Ruth Keelikolani Building
830 Punchbowl Street
Honolulu, Hawaii 96813

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Re: Proposed Rules Relating to Exported Services
Decision Making: December 21, 2017, 9:00 a.m.
Room 310, 830 Punchbowl Street

Gentlemen:

This is a follow-up to my letter of December 11, 2017. As previously explained, we believe that the Proposed Rules would violate the Internet Tax Freedom Act ("ITFA") and the Hawai'i and U.S. Constitutions, by discriminating against companies providing **online** travel reservation services using an agency model. Basically the rule would impose Hawaii GE Tax on commissions earned through online transactions, but would not impose Hawaii GE Tax on similar commissions earned through substantively identical transactions accomplished through non-internet means. The ITFA prohibits such "discriminatory taxes on electronic commerce." Pub. L. 105-277, as amended, §1101(a)(2) (codified at 47 U.S.C. §151 note). There is no rational justification for the discriminatory impact of the Proposed Rules, which are contrary to longstanding policy and practice and not supported by the controlling law.

We urge you to consult with the Attorney General's Office about this legal issue.

Very truly yours,
TORKILDSON, KATZ, MOORE,
HETHERINGTON & HARRIS
Attorneys At Law, A Law Corporation


Ronald I. Heller

RIH/dlb

Rules Office, Department of Taxation
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cc: Daniel Zariski
Brian Hershman
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