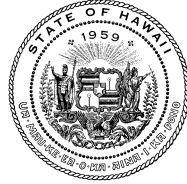


LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

STANLEY SHIRAKI
DIRECTOR OF TAXATION

RONALD B. RANDALL
ACTING DEPUTY DIRECTOR

September 27, 2010

LETTER RULING NO. 2010-21

[REDACTED TEXT]

[REDACTED TEXT]

[REDACTED TEXT]

[REDACTED TEXT]

Re: **Application of General Excise Tax Wholesale Rate to Sales of Leis to Hotels**

Dear [REDACTED TEXT]:

This responds to your letter dated February 20, 2009 requesting a determination that gross proceeds from [REDACTED TEXT] (Taxpayer's) sales of leis to hotels are sales at wholesale and subject to the General Excise (GE) tax at the rate of one-half of one percent.

SHORT ANSWER

Based upon the facts represented to the Department, Taxpayer's sales of leis to hotels are wholesale transactions and gross proceeds from the sales are subject to GE tax at the 0.5% rate.

FACTS

You represent the following:

Taxpayer engages in several different types of business activities, but for purposes of this ruling, the relevant activity consists of growing flowers, making them into flower leis, and selling the leis to various hotels that give the leis to hotel guests.

The hotels do not charge the guests any specifically stated or identified amount for the leis. Instead, the cost of the leis is simply part of the overall cost incurred by the hotels in providing accommodations to their guests. In effect, a portion (but not an identified portion) of the room charge paid by the guest is payment for the leis provided.

In most cases, the leis are given to the guests upon arrival at the hotel, as part of the check-in process. In some cases, the leis may be left in the hotel room for the guests to find upon

Letter Ruling No. 2010-21

[REDACTED TEXT]

September 27, 2010

Page 2 of 3

arrival. The leis are not given to the general public; they are given only to hotel guests who are actually staying at the hotel.

Occasionally, the hotels may advertise that a flower lei upon arrival is part of their accommodations package.

Some guests choose to wear the leis; others may leave the leis in their room as a temporary floral decoration.

The leis are made from freshly picked flowers, and therefore have a useful life of a few days – although a guest is free to take his or her lei home upon departure, few do. In most cases, the guest simply enjoys the lei during his or her hotel stay.

LAW AND ANALYSIS

Under HRS § 237-13.3, proceeds from sales at wholesale are subject to GE tax at the rate of 0.5%.

HRS § 237-4(a)(8) defines "sales at wholesale" to include sales of tangible personal property where (1) the sale is upon the order or request of a licensed seller for the purpose of rendering a service in the course of said licensed seller's service business, (2) the tangible personal property becomes or is used as an identifiable element of the service rendered, and (3) the cost of the tangible personal property does not constitute overhead with respect to the licensed seller. Overhead is defined as continuous or general costs occurring in the normal course of business, for example utility costs. *See* Tax Advisory on Act 71, Session Laws of Hawaii 1999 (January 13, 2000).

Based upon the representations, the Department finds that Taxpayer's sales of leis to hotels meet each of these three requirements. First, the sales of leis are upon the order of hotels for the purpose of rendering the service of providing transient accommodation. Second, the leis become or are used as an identifiable element of the service of providing transient accommodation. Third, the cost of purchasing leis does not constitute overhead with respect to the hotels. Thus, based upon the representations, Taxpayer's sales of leis to hotels, where the hotels then give those leis to guests as part of their service of providing transient accommodation, are sales at wholesale within the meaning of HRS § 237-4(a)(8) and are subject to GE tax at the 0.5% rate.

The conclusion reached in this letter is based on our understanding of the facts that you have represented. If it is later determined that our understanding of these facts is not correct, the facts are incomplete, or the facts later change in any material respect, the conclusion in this letter will be modified accordingly. This ruling also may be subject to change due to future amendments to laws, rules, or official Department positions.

The Taxpayer has reviewed and agreed that the redacted version of this ruling will be

Letter Ruling No. 2010-21

[REDACTED TEXT]

September 27, 2010

Page 3 of 3

available for public inspection and copying.

If you have any further questions regarding this matter, please call me at 808-587-5334.

Sincerely,

/s/ Jacob L. Herlitz

JACOB L. HERLITZ
Administrative Rules Specialist

APPROVED:

/s/ Johnnel Nakamura

JOHNNEL NAKAMURA
Administrative Rules Officer