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DEPARTMENT OF TAXATION
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STANLEY SHIRAKI
DIRECTOR OF TAXATION

RONALD B. RANDALL
ACTING DEPUTY DIRECTOR

November 15, 2010

LETTER RULING NO. 2010-28

[redacted text]

Re: Exemption of Certain Scientific Contracts with the United States

Dear [redacted text]:

By letter dated August 9, 2010 and amended September 29, 2010, [redacted text] ("Taxpayer"), a [redacted text] nonprofit corporation, requested the State of Hawaii Department of Taxation (the "Department") rule on the proper treatment of gross proceeds derived from the performance of scientific work under contracts entered into with the United States under sections 237-26 and 238-3(j) of the Hawaii Revised Statutes ("HRS").

RULING REQUESTED

The work performed by Taxpayer under [redacted text] (the "Contracts") entered into with the United States constitutes "scientific work" as defined under HRS § 237-26. The gross proceeds derived by Taxpayer from the performance of the scientific work in the Contracts are exempt from general excise tax under HRS § 237-26. The gross proceeds derived from sales of tangible personal property to Taxpayer are exempt from general excise tax under HRS § 237-26, provided that such tangible personal property is to be affixed to, or to become a physical, integral part of the scientific facility for which the scientific work in the Contracts is being performed, or provided that such tangible personal property is to be entirely consumed during the performance of the scientific work in the Contracts. Under HRS § 238-3(j), the use tax does not apply to any tangible personal property imported by Taxpayer which to be affixed to, or to become a physical, integral part the scientific facility for which the scientific work in the Contracts is being performed, or which is to be entirely consumed during the performance of the scientific work in the Contract.

SHORT ANSWER

Based on Taxpayer's representations, Taxpayer is performing scientific work under the Contracts and therefore Taxpayer's gross proceeds derived from the performance of that portion of the Contracts which constitutes scientific work are exempt from general excise tax under HRS § 237-26. Additionally, based on Taxpayer's representations, the gross proceeds derived from

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sales of tangible personal property to Taxpayer are exempt from general excise tax under HRS § 237-26, provided that such tangible personal property is to be affixed to, or to become a physical, integral part of the scientific facility for which the scientific work in the Contracts is being performed, or such tangible personal property is to be entirely consumed during the performance of the scientific work in the Contracts. Further, under HRS § 238-3(j), the use tax does not apply to any tangible personal property imported by Taxpayer which to be affixed to, or to become a physical, integral part the scientific facility for which the scientific work in the Contracts is being performed, or which is to be entirely consumed during the performance of the scientific work in the Contract.

FACTS REPRESENTED BY TAXPAYER

1. Taxpayer Information

[redacted text]

2. Description of Taxpayer's Business Operations

[redacted text]

Taxpayer is a nonprofit corporation formed under the laws of the State of [redacted text], and qualified to transact business in the State of Hawaii on [redacted text]. Taxpayer is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code. A copy of Taxpayer's determination letter has been provided to the Department. Taxpayer is registered with the State of Hawaii Department of Taxation as a nonprofit organization under Section 237-23, HRS.

3. Facts Relating to Transaction

Taxpayer is a party to [redacted text], entered into between the United States of America, represented by the National Science Foundation ("NSF"), and Taxpayer (the "Contracts").

Under [redacted text], Taxpayer is responsible for the management, operation, and maintenance of [redacted text] on behalf of NSF and the national community of [redacted text] researchers. [redacted text] is a world-leading institution that provides [redacted text]. [redacted text] facilities include [redacted text]. [redacted text] primarily conducts [redacted text] research at its facilities to advance the understanding of [redacted text].

Pursuant to the terms of [redacted text], Taxpayer is responsible for the design, construction, and testing of [redacted text] (the "Facility") [redacted text]. The Facility is a project of [redacted text]. The Facility will be the world's flagship facility for the study of

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[redacted text]. The Facility includes [redacted text], its buildings, associated infrastructure, and support infrastructure. The Facility will be primarily used to conduct [redacted text] research, with the primary utilization of facilities being scientific based on the merit of the proposed research. Copies of the relevant portions of the Contracts relating to Taxpayer's activities in Hawaii have been provided to the Department.

LAW AND ANALYSIS

HRS § 237-26 states:

- (a) Any provision of law to the contrary notwithstanding, there shall be exempted from the measure of the taxes imposed by chapter 237, all of the gross proceeds derived by a contractor or subcontractor arising from the performance of any scientific work as defined in subsection (b), under a contract or subcontract entered into with the United States (including any agency or instrumentality thereof but not including national banks), and all of the gross proceeds derived from the sale of tangible personal property by a seller of such tangible personal property which is to be affixed to, or to become a physical, integral part of the scientific facility, or which is to be entirely consumed during the performance of the service required by the contract or subcontract.
- (b) For purposes of this section, "scientific work" is work involving primarily the research and development for, or the design, manufacture, instrumentation, installation, maintenance, or operation of aerospace, agricultural, astronomical, biomedical, electronic, geophysical, oceanographic, test range, or other scientific facilities. Maintenance or operation, for purposes of this section, shall include housekeeping functions in providing certain nonscientific logistic and support services.

Based on Taxpayer's representations, the Facility will be a scientific facility because it will be a facility which primarily engages in astronomical research, specifically [redacted text].

Under HRS § 237-26(b), research and development for, or the design, manufacture, instrumentation, installation, maintenance, or operation of scientific facilities constitutes "scientific work." Therefore, based on Taxpayer's representations, it will be performing scientific work under [redacted text] when it performs the management, operation and maintenance of the Facility. Further, based on Taxpayer's representations, it will be performing scientific work under [redacted text] when it performs the design and construction of the Facility.

Under HRS § 237-26(a) gross proceeds derived from the performance of scientific work under a contract with the United States are exempt from general excise tax. Based on Taxpayer's representations, under the Contracts, Taxpayer is performing scientific work pursuant to a

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contract with the United States and therefore gross proceeds derived from the portion of the Contracts that constitutes management, operation, maintenance or design of the Facility are exempt from general excise tax under HRS § 237-26(a).

Additionally, all of the gross proceeds derived from the sale of tangible personal property by a seller of such tangible personal property which is to be affixed to, or to become a physical, integral part of the Facility, or which is to be entirely consumed during the performance of the scientific work described above are exempt from general excise tax under HRS § 237-26(a).

Under HRS § 238-3(j), the use tax does not apply to any use of property, services, or contracting exempted by section 237-26. Therefore, the use tax does not apply to any tangible personal property imported by Taxpayer which is to be affixed to, or to become a physical, integral part of the Facility, or which is to be entirely consumed during the performance of Taxpayer's scientific work described above.

This ruling is applicable only to Taxpayer. It may not be used or cited as precedent by any other taxpayer. The conclusions reached in this letter are 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 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