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DEPUTY DIRECTOR

August 30, 2011

Letter Ruling No. 2011-08

[redacted text]

[redacted text]

[redacted text]

Re: Exemption of Certain Scientific Contracts with the United States

Dear [redacted text]:

By letter dated January 31, 2011, [redacted text] ("Taxpayer") 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 a contract entered into with the United States under section 237-26 of the Hawaii Revised Statutes ("HRS").

SHORT ANSWER

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

FACTS REPRESENTED BY TAXPAYER

1. Taxpayer Information: [redacted text].
2. Annual Accounting Period: [redacted text].
3. Business Operations: Taxpayer is certified as a Native Hawaiian Owned (NHO) small business 8(a) contractor under the Federal Small Business Administration 8(a) Program. Taxpayer is an integrated business that provides engineering and other professional and administrative services in support of manufacturing, research and development, IT and communication, and facilities related services. [redacted text]
4. Facts Relating to the Transaction: The contract is with the General Services Administration of the United States as the contracting agent for the Department of Defense (DoD) and Veterans Administration (VA) of the United States, and is Contract No. [redacted text]. The contract requires Taxpayer to design, construct and operate a data laboratory for research,

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development, testing, verification and validation of [redacted text]. [redacted text]. All tangible personal property such as hardware and software, furnishings such as racks and air conditioning units, and cabling will be affixed to or become a physical and integral part of the laboratory. All services procured or provided to design and construct the laboratory, and install/integrate the hardware, software, and furnishings, will be consumed in standing up of the data laboratory. All services provided or procured in the annual operations of the laboratory will be consumed in the performance of the contract services during the [redacted text] term of the contract. The mission of the laboratory is to support the research, development, testing, verification and validation of [redacted text]. The annual operations of the laboratory include maintenance, housekeeping, and logistics functions to keep the laboratory running efficiently.

5. Taxpayer is unaware of any authority or past rulings that are contrary to the position put forth in this request.

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.

Taxpayer's gross proceeds from the design, construction and operation of the data laboratory under the contract are exempt from general excise tax.

First, the work is being performed under a contract with the United States. Based on Taxpayer's representations, Taxpayer contracted with the General Services Administration of the United States as the contracting agent for the Department of Defense (DoD) and Veterans Administration.

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Second, Taxpayer is performing scientific work. HRS § 237-26(b) defines scientific work to include "design, manufacture, instrumentation, installation, maintenance, or operation of ... electronic ... or other scientific facilities." Based on Taxpayer's representations, the laboratory Taxpayer will design, manufacture, install, maintain and operate is an electronic scientific facility.

Thus, based on Taxpayer's representations, Taxpayer is performing scientific work and doing so under a contract with the United States. Any gross proceeds from the scientific work of designing, manufacturing, instrumenting, installing, maintaining, or operating the laboratory pursuant to Taxpayer's contract are exempt from general excise tax.

Additionally, any subcontractors Taxpayer hires may also potentially qualify for this exemption, so long as those subcontractors are also performing scientific work. However, the Department does not rule on the taxability of any of Taxpayer's specific subcontractors at this time.

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 the redacted version of this ruling and agreed that it 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 /s/

JACOB L. HERLITZ
Administrative Rules Specialist