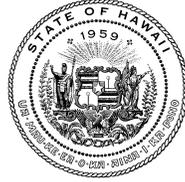


NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
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FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

December 7, 2011

LETTER RULING 2011-11

[Redacted Text]
[Redacted Text]
[Redacted Text]

RE: [Redacted Text] ("Company")

Dear [Redacted Text]:

This responds to your request for confirmation on the proper application of the GET and use tax on Company's sales of goods and installation services to the federal government, and Company's project management fees charged to a subcontractor (Dealer) that is handling the non-Hawaii-related portion of such contract.

SHORT ANSWER

Company is not subject to the GET on gross receipts earned from the sale of goods to the federal government for delivery and installation at Hawaii locations under the Contract. Gross receipts from the sale of goods for delivery outside of Hawaii are not subject to the GET. Income from exported services is not subject to the GET. The value of the goods sold by Company to the federal government for locations in Hawaii that are imported or purchased from an unlicensed seller is subject to the use tax of one-half of one per cent on the value of such goods.

Gross receipts from the Dealer's sale of goods for delivery outside of Hawaii are not subject to the GET for Company. Gross receipts from the Dealer's installation services that are performed outside of Hawaii are not subject to the GET for Company. Company is also not subject to the use tax on the value of the goods delivered to and installation services performed in California by the Dealer.

FACTS REPRESENTED BY THE TAXPAYER

Company is a Hawaii corporation operating as a dealer of [Redacted Text]. Company sells furniture acquired from a mainland manufacturer ("Manufacturer"). Company entered into a [Redacted Text] General Services Administration contract with the federal government dated [Redacted Text] to provide: (1) Manufacturer's brand furniture, (2) computer furniture, workstations, and accessories, (3) filing and storage systems, (4) multi-purpose seating furniture, and (5) tables (the "Contract"). A copy of the Contract was submitted with your request. Such

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products will be delivered to Hawaii and non-Hawaii federal facilities, and Company will provide services related to the installation of such products. According to the contract, these related services include installation ([Redacted Text] for projects up to [Redacted Text], negotiated for larger projects), staging [Redacted Text]pounds), warehousing [Redacted Text], site preparation [Redacted Text], and other ancillary services ([Redacted Text]. These fees are very small compared to the total price of the goods delivered and, therefore, are incidental to the furnishing and installation of the products provided.

Company subcontracted a portion of the work under the Contract to Dealer to provide the goods to be delivered to federal facilities in another state and perform installation services there. In exchange, the Dealer agreed to pay Company a fee in an amount equal to [Redacted Text] of the goods and services provided by the Dealer to the federal government (the "Fee"). The billing arrangement is such that the Dealer would send invoices to Company for the goods and services provided to the federal government. In turn Company would add [Redacted Text] as its fee to the price of the goods and services and send an invoice to the federal government. Upon receipt of the invoiced amount from the federal government, Company remits payment to the Dealer for its invoiced amount and keeps the remainder [Redacted Text] as its fee. Company accepts purchase orders from the federal government in its own name. All purchase orders and payments under the Contract must be in the name of Company. Company received an export exemption certificate from the Dealer for the services provided to the Dealer. Company also received an export exemption certificate from the federal government for the goods delivered outside of Hawaii. Company expects to enter into similar arrangements with vendors other than the Dealer to provide goods and services to the federal government under the Contract.

LAW AND ANALYSIS

Gross receipts from goods and services provided by Company under the Contract in Hawaii

HRS § 237-25(a) provides "there shall be exempted from, and excluded from the measures of, the tax imposed by chapter 237 all sales, and the gross proceeds of all sales, of . . . tangible personal property sold by any person licensed under this chapter to the United States (including any agency, instrumentality, or federal credit union thereof but not including national banks)." Under HRS § 237-25(c), the exemption does not apply to "any person engaging or continuing in a service business . . . , and the person shall not be entitled to deduct any amount for tangible personal property . . . even though the person separately bills or otherwise shows the amount of the gross income of the business derived from the furnishing of the property." In the present case, Company provides to the federal government both goods and services under the Contract but the services are incidental to the sale of the goods so the entire contract is considered to be the sale of tangible personal property to the federal government and exempt from GET.

Regarding the use tax, HRS § 238-2 imposes the tax on "the use in this State of tangible personal property which is imported by a taxpayer in this State whether owned, purchased from an unlicensed seller, or however acquired for use in this State." HRS § 238-2(2)(A) provides for

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“[a] retailer or other person importing or purchasing [tangible personal property] for purposes of resale . . . the tax shall be one-half of one per cent of the purchase price of the property, if the purchase and sale are consummated in Hawaii” If Company imports or purchases goods from an unlicensed seller to be resold to Hawaii locations Company is subject to the use tax of one-half of one per cent on the purchase price of such goods.

For use tax purposes, HRS § 238-1 provides the definition of “‘purchaser’ and ‘importer’ shall not include . . . the United States, its wholly owned agencies or Instrumentalities” You contend that because the federal government is excluded from the definition of “purchaser” or “importer” under HRS § 238-1, the use tax does not apply to the value of the goods provided to the federal government under the Contract. Company, not the federal government, is the importer for purposes of Hawaii’s Use Tax and, therefore, Company is subject to the tax on the importation of the furniture provided under the Contract for Hawaii locations.

Gross receipts from goods and services provided by the Company and Dealer out-of-state, including exported services and fee

Company subcontracted a portion of the work under the Contract to the Dealer to provide the goods to be delivered to non-Hawaii federal facilities and perform installation services in that state. HRS § 237-29.5 provides an exemption from the GET gross proceeds arising from the sale of tangible personal property that is shipped by the manufacturer or seller to a point outside the State of Hawaii where the property is resold or otherwise consumed or used outside the State. In the present case, the Company and Dealer are selling goods outside of Hawaii for delivery to non-Hawaii locations. Gross receipts from the Company’s and Dealer’s sale of goods and installation services for delivery outside of Hawaii are not subject to the GET for Company under HRS §§ 237-29.5 and 237-29.53 or because the transaction takes place outside of Hawaii.

Regarding the use tax, HRS § 238-2 imposes the tax on “the use in this State of tangible personal property which is imported by a taxpayer in this State whether owned, purchased from an unlicensed seller, or however acquired for use in this State.” HRS § 238-2.3 imposes the use tax on the “value of services . . . that are performed by an unlicensed seller at a point outside the State and imported or purchased for use in this State.” Because the Company and Dealer deliver the goods and the installations services are consumed outside of Hawaii the use tax does not apply to the value of the goods and services provided by the Company and Dealer under the Contract.

The fee received from the Dealer is a fee for services relating to the non-Hawaii contract. This fee is not a commission because Company does not meet the definition of representative or purchasing agent contained in HRS § 237-1 which require that the property purchased be used in Hawaii. HRS § 237-29.53 provides an exemption for gross income derived from services performed by a person engaged in a service business in the State for use, outside the State where the services are for resale, consumption, or use outside the State. The services relating to the non-Hawaii contract are consumed outside of Hawaii and, therefore, the general excise tax does

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not apply to the value of these exported services.

CONCLUSION

In answering your questions, I am making the following assumptions:

- The furniture is not attached to and does not become a part of real property.
 - Installation services are incidental to the sale of the furniture.
- 1) (a) Is Company liable for the GET on the gross receipts from the sale of goods provided under the Contract? (b) Is Company liable for the use tax on the value of the goods provided under the Contract?
- (a) Company is not subject to the GET on gross receipts earned from the sale of goods for delivery to federal government locations in Hawaii under the Contract. Gross receipts from the sale of goods for delivery outside of Hawaii also are not subject to the GET.
 - (b) The landed value of the goods sold to the federal government in Hawaii is subject to the use tax of one-half of one per cent on the value of such goods.
- 2) (a) Is Company liable for the GET on the gross receipts from the performance of installation services provided under the Contract? (b) Is Company liable for the use tax on the value of the installation services provided under the Contract?
- (a) The installation services pursuant to furniture sales under the contract are considered to be incidental to the sale of the tangible personal property. The charges for these services are included in the sales price of the tangible personal property and would, therefore, be exempt from the GET as a sale of tangible personal property to the federal government.
 - (b) Company is not liable for Hawaii's Use Tax on the value of the installation services provided under the Contract. The installation services that are performed in Hawaii are not imported services so Use Tax is not due on the value of those services. The services for the non-Hawaii installations are not consumed in Hawaii and are not subject to Hawaii's Use Tax.
- 3) (a) Does the Fee qualify under the GET exemption for exported services under HRS § 237-29.53? (b) Is the Fee subject to the use tax?
- (a) Yes, Company's Fee does qualify under the exemption for exported services under HRS § 237-29.53.
 - (b) Company is not subject to the use tax on the Fee because the Fee is payment for services that are consumed outside of Hawaii.

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- 4) (a) Is Company subject to the GET on the gross receipts from the goods delivered to and installation services performed in California by the Dealer? (b) Is Company subject to the use tax on the value of goods delivered to and services performed in California by the Dealer?
- (a) Gross receipts from the sale of goods and services for delivery and installation outside of Hawaii are not subject to the GET for Company.
- (b) Company is not subject to Hawaii's Use Tax on the value of the goods delivered to and installation services performed outside of Hawaii by the Dealer.

This ruling is applicable to Company and shall be applied from the date of Company's ruling request, January 2, 2009. It may not be used or cited as precedent by any other taxpayer, and is based on our understanding of the facts that you 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 position.

Company has reviewed and agreed that the redacted version of this ruling as Exhibit A will be available for public inspection and copying.

If you have further questions regarding this matter, please call me at (808) 587-1577. Additional information on Hawaii's taxes is available at the Department's website at <http://hawaii.gov/tax/>.

Very truly yours,

LINN A. GARCIA
Income Tax Specialist