

NEIL ABERCROMBIE
GOVERNOR

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DEPUTY DIRECTOR

July 17, 2012

LETTER RULING 2012-11

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

Dear [Redacted Text]:

QUESTION PRESENTED

By letter dated February 20, 2012, [Redacted Text] ("Taxpayer") asked whether the county surcharge authorized by Section 237-8.6 is applicable to gross receipts obtained from transactions with clients located outside the Oahu taxation district.

SHORT ANSWER

The county surcharge is not applicable to gross receipts obtained from transactions in which Taxpayer's customers use or consume the service outside the Oahu taxation district. For the purposes of determining whether or not the county surcharge applies in any given transaction, Taxpayer's customers are considered to consume the service in the county in which their business address is located.

FACTS

You represent the following:

Taxpayer provides services to [Redacted Text], specifically services pertaining to communications between [Redacted Text] and their clients. Services rendered include answering telephones, and taking messages on behalf of [Redacted Text], and relaying messages to the [Redacted Text] based on their instructions. Additional services include confirming and researching messages, as well as retention of documented messages for a period of seven years.

Services are performed exclusively in the Oahu district, where Taxpayer's offices are located. However the services are performed on behalf of [Redacted Text] on all islands. No services are performed on behalf of [Redacted Text] clients, which may be located anywhere in the world.

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LAW AND ANALYSIS

Under Section 237-13(6)(A) of the Hawaii Revised Statutes, ("HRS") a business engaged in the sale of services of the type described above is subject to GET at a rate equal to four percent of the gross income of the business. The county surcharge on state tax is authorized by HRS § 237-8.6 and, in the City and County of Honolulu, is set at 0.5 percent by Section 6-60.1 of the Revised Ordinances of Honolulu 1990. Section 18-237-8.6-03 of the Hawaii Administrative Rules ("HAR") dictates that "Gross income received by a taxpayer engaged in a service business shall be allocated to the taxation district in which the services are intended to be used or consumed." Relevant to this analysis, the section also provides that "The county surcharge pursuant to Section 237-8.6, HRS, shall be imposed on gross income and gross proceeds for services intended to be used or consumed in the Oahu district provided the taxpayer has substantial nexus with the Oahu district." At present the City and County of Honolulu is the only county in the State that has created a surcharge pursuant to HRS § 237-8.6.

Given the mobility of modern communication methods, it may not be possible to determine where any given message taken or retained by Taxpayer's office is actually received by a client of Taxpayer's business. For example, one of Taxpayer's clients with an office located on Maui could easily receive messages via mobile phone or other mobile device while on Oahu, or indeed anywhere in the world. However, the Administrative Rules are clear that income received should be allocated to the place where the services "are intended to be used or consumed."

Federal law enacted to deal with a similar issue is instructive. The Mobile Telecommunications Sourcing Act (4 U.S.C. §§ 116 et seq.) was enacted in 2000 to address the problem of determining the situs of mobile telecommunications calls for transactional purposes. It uses a customer's "place of primary use," defined in the Act as a home or business address, to determine where telecommunications services are to be sourced for purposes of taxation. For the purposes of determining where clients receive the benefit of Taxpayer's services, the Department uses a similar analysis. Taxpayer's clients' business addresses are the place of primary use of Taxpayer's services, even if clients may use the services in other locations from time to time. As the Mobile Telecommunications Sourcing Act deems the situs of mobile telecommunications services to be the customer's home or business address, the Department deems Taxpayer's clients' business addresses to be the site where Taxpayer's services are intended to be used or consumed. Therefore, for the purposes of allocating gross receipts to the appropriate taxation district, Taxpayer should allocate its gross receipts from a given transaction to the taxation district in which the client for that transaction has his or her business address.

Taxpayer represents that all services performed are performed in the Oahu district, but are performed for customers who may reside in the Oahu district or in any of the other taxation districts in the State. Gross receipts from services provided to clients with business addresses in the Oahu taxation district are subject to the county surcharge. Gross receipts from clients with business addresses outside the Oahu taxation district are not.

The rulings contained in this letter are based on information and representations submitted by Taxpayer and accompanied by penalty of perjury statements executed by appropriate parties. While this office has not verified any of the material submitted in support of

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[Redacted Text]

[Redacted Text]

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the request for a ruling, it is subject to verification on examination.

Except for the specific ruling above, we express or imply no opinion concerning the tax consequences of the facts of this case under any other provision.

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 **[Redacted Text]**.

Sincerely,

BENJAMIN R. BROWER
Administrative Rules Specialist