



DEPARTMENT OF TAXATION
STATE OF HAWAII

February 12, 1988

TAX INFORMATION RELEASE

No. 88-1

RE: General excise tax exemption for sales of tangible personal property shipped out of the State.

I. EXPORT EXEMPTION

Effective January 1, 1988, section 237-29.5, Hawaii Revised Statutes ("HRS"), provides that the value or gross proceeds arising from the privilege of manufacturing or selling tangible personal property are exempt from taxation under chapter 237, HRS, if:

- (1) The property is shipped by a manufacturer or manufacturer acting in the capacity of a seller ("seller") to a point outside the State where the property is resold or otherwise consumed or used outside the State in the taxpayer's or the purchaser's business ("export exemption"); or
- (2) The sale is exempt under section 237-24(18), HRS.

II. APPLICATION OF EXPORT EXEMPTION

For purposes of section 237-29.5, HRS, the particular tax at issue (i.e., one-half of one per cent) is that which is imposed on manufacturers for the privilege of manufacturing within the State.

The general excise tax generally does not attach (the export exemption applies) when:

- (1) In the case of the sale, property is shipped by a seller to a point outside the State (title to the property sold passes from the seller to the purchaser outside the State) where the property will be resold, consumed, or used outside the State in the purchaser's business; or
- (2) The property is shipped by a manufacturer to a point outside the State where the property will be resold, consumed, or used outside the State in the manufacturer's business.

When title passes is dependent upon the facts and circumstances of the transaction as gathered from the contract of sale, invoice, or attendant circumstances. Among the circumstances which the Department of Taxation of the State of Hawaii ("Department") may consider in making this determination are:

- (1) When the risk of loss transferred from the seller to the purchaser; and
- (2) When title to the property sold passed from the seller to the purchaser under provisions of the Uniform Commercial Code, chapter 490, HRS.

III. MANUFACTURER RELIEVED OF GENERAL EXCISE TAX LIABILITY IN CERTAIN CASES

Pursuant to section 237-29.5, HRS, a manufacturer shall be relieved of tax liability under chapter 237, HRS, if the manufacturer satisfies its burden of proving to the satisfaction of the Department that:

- (1) In the case of a sale, the seller in good faith accepted a proper certification or its equivalent from the purchaser that (A) title to the property sold passed from the seller to the purchaser outside the State, (B) the property was shipped or transmitted by the seller to the purchaser at a point outside the State, and (C) the property will be resold, consumed, or used by the purchaser outside the State in the purchaser's business. If the seller at the time of the sale had reason to believe that the property sold by it was not intended for the exempt purpose indicated in the certificate or its equivalent, the seller shall not be deemed to have accepted certification from the purchaser in good faith. The seller retains the certificate or its equivalent at the seller's place of business for inspection by the Department. The seller also retains, at its place of business for inspection by the Department, a copy of the written contract or invoice directed to the purchaser. The contract or invoice (or by a statement attached thereto) must reflect items (A) to (C) of this paragraph. The seller retains, at its place of business for inspection by the Department, a copy of the shipping document regarding the property for which the export exemption was claimed; or
- (2) In a situation other than a sale, the manufacturer retains, at its place of business for inspection by the Department, a copy of the shipping document regarding the property for which the export exemption was claimed.

If the manufacturer fails to satisfy its burden of proof, the manufacturer shall remit to the Department the tax due on the property for which the export exemption was claimed.

IV. INFORMATION TO BE FURNISHED TO THE PURCHASER

A seller who is claiming the export exemption under section 237-29.5, HRS, shall indicate the following information to the purchaser:

- (1) The purchaser is obtaining property for which the seller claimed a tax exemption, based on the export exemption (i.e., the property was shipped by a seller to a point outside the State where the property will be resold, consumed, or used outside the State in the purchaser's business); and
- (2) The purchaser is required to notify the seller if the property will not be resold, consumed, or used outside the State in the purchaser's business.

The seller may transmit this information by any convenient means, such as coding the sales invoices; provided that the information is presented with sufficient particularity.

V. CERTIFICATION

The certificate or its equivalent shall contain the following information:

- (1) Name of the seller taxpayer;
- (2) Address of the seller taxpayer;
- (3) Hawaii General Excise Identification Number of the seller taxpayer;
- (4) Nature and character of the seller taxpayer's business;
- (5) Description of the tangible personal property involved in the transaction;
- (6) Name of the user, consumer, or purchaser of the subject tangible personal property;
- (7) Address of the user, consumer, or purchaser of the subject tangible personal property;
- (8) Nature and character of the user, consumer, or purchaser's business; and
- (9) The value or gross proceeds involved in the transaction.

The certificate shall be dated, executed, and signed by both the purchaser and seller. Under penalty of perjury, both the seller and purchaser shall swear or affirm that the information on the certificate is true and correct as to every material matter. The seller shall certify to the Department that if (1) title to the property for which the export exemption was claimed did not pass from the seller to the purchaser outside the State, (2) the property was not shipped or transmitted by the seller to the

purchaser at a point outside the State, or (3) the property is not for resale, consumption, or use outside the State in the purchaser's business, the seller will remit to the Department the tax due on the property.

The certificate shall be in such form as the Department shall determine in the future. Prior to the Department's issuance of a form certificate, any form of certificate, including an invoice or a contract of sale, will be acceptable if it includes all the information required to be contained in such a certificate as stated in this Tax Information Release. A certificate or its equivalent which does not include all the information required to be contained in such a certificate as stated in this Tax Information Release shall be deemed invalid.

A certificate or its equivalent shall be a part of each order or contract of sale between the seller and purchaser who are signatories to the certificate or its equivalent, except as to those orders which the seller and purchaser shall specify in writing that the certificate or its equivalent does not apply. The certificate or its equivalent shall be valid until canceled, in writing, by the parties who are signatories to the certificate or its equivalent, or revoked by the Department.

VI. REVOCATION OR SUSPENSION OF CERTIFICATE

The Director of Taxation of the State of Hawaii ("Director") may revoke or temporarily suspend, upon written notice, the certificate or its equivalent and the right of the seller to claim an exemption under section 237-29.5, HRS. The Director may make such revocation or suspension in any case in which the Director finds that (1) the seller is not licensed under chapter 237, HRS, or the purchaser, user, or consumer is not purchasing or otherwise consuming or using the product outside the State in the purchaser's business; (2) the seller is for some other reason not eligible under this Tax Information Release to retain a certificate or its equivalent; (3) the seller has used the certificate or its equivalent to avoid the payment of any tax imposed by chapter 237, HRS, or to postpone or interfere in any manner with the collection of such tax; (4) the revocation or suspension is necessary to protect the state tax revenues; or (5) the seller failed to comply with the requirements of this Tax Information Release regarding the evidence required to support a claim for an exemption under this section. The revocation or suspension of a certificate or its equivalent is in addition to any other penalty that may apply under the law for any act or failure to act.

VII. GENERAL EXCISE TAX RETURN

The following steps shall be completed on the general excise tax returns (i.e., Form G-45, Form G-49) in order for a taxpayer to claim properly the export exemption:

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- (1) Schedule A, column a of the tax return (side one):
State the entire value or gross proceeds received from the privilege of manufacturing or selling tangible personal property which is shipped out of the State. This amount shall include any amount which the taxpayer will ultimately claim is exempt from taxation pursuant to section 237-29.5, HRS;
- (2) Reverse side of the tax return (side two):
State both the amount and a brief description (i.e., name of purchaser) of the activity which the taxpayer claims is exempt from taxation pursuant to section 237-29.5, HRS;
- (3) Schedule A, column b of the tax return (side one):
State the amount which the taxpayer claims is exempt from taxation pursuant to section 237-29.5, HRS, (the amount in step two, above); and
- (4) Complete the remaining sections as explained on the tax return.

VIII. PRODUCER NOT EXEMPT FROM TAXATION UNDER SECTION 237-29.5, HRS

The value or gross proceeds received by a producer is not exempt from taxation under section 237-29.5, HRS. The Department will be submitting legislation during the 1988 legislative session to clarify this matter.


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