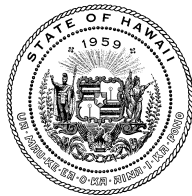


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February 18, 2009

TAX INFORMATION RELEASE NO. 2009-01

RE: Procedural Guidelines for Requesting Letter Rulings

This Tax Information Release (TIR) is issued to provide taxpayers and tax practitioners and the public with guidelines on how the Department will process requests for tax guidance.

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.01—Description of terms used in this Tax Information Release

SECTION 2. WHAT IS THE FORM IN WHICH THE DEPARTMENT PROVIDES ADVICE TO TAXPAYERS?

.01—Letter ruling

.02—Determination letter

.03—Information letter

.04—Oral Advice

(a) No oral rulings and no written rulings in response to oral requests.

(b) Discussion possible on substantive issues.

SECTION 3. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN ADVICE UNDER THIS TAX INFORMATION RELEASE?

SECTION 4. UNDER WHAT CIRCUMSTANCES DOES THE DEPARTMENT NOT ISSUE LETTER RULINGS OR DETERMINATION LETTERS?

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.02—Ordinarily not in certain areas because of factual nature of the problem

- .03—Ordinarily not on which of two entities is a common law employer
- .04—Generally not to business association or groups
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APPENDIX A

Sample Format for a Letter Ruling Request

SECTION 1. WHAT IS THE PURPOSE OF THIS TAX INFORMATION RELEASE?

This TIR explains how the Department provides advice to taxpayers on issues of Hawaii tax law. This TIR explains the forms of advice and the manner in which advice is requested by taxpayers and provided by the Department. A sample format of a request for a letter ruling is provided in Appendix A. See Section 4 for issues outside the scope of this TIR.

.01—Description of terms used in this Tax Information Release

For purposes of this TIR—

- (1) the term “Department” means the Hawaii Department of Taxation.
- (2) the term "Rules Office" means the division of the Department of Taxation charged with interpreting tax laws and administrative rules relating to taxation, the Rules Officer charged with oversight and management of the Rules Office, and the administrative rules and technical subdivisions therein.
- (3) the term "Director" means the Director of Taxation.
- (4) the term "Taxpayer" includes all persons subject to any provision of Hawaii law relating to taxation, including without limitation Title 14, Hawaii Revised Statutes, and, when appropriate, their representatives.

SECTION 2. WHAT IS THE FORM IN WHICH THE DEPARTMENT PROVIDES ADVICE TO TAXPAYERS?

.01—Letter ruling

A “letter ruling” is a written determination issued to a taxpayer by the Rules Office in response to a written inquiry from an individual or an organization about its status for tax purposes or the tax effects of its acts or transactions, prior to the filing of returns or reports that are required by the tax laws. A letter ruling interprets and applies the tax laws to the taxpayer’s specific set of facts and is given when appropriate in the interest of sound tax administration. Once issued, a letter ruling may be revoked or modified for any number of reasons, as explained in Section 7 of this TIR. For purposes of this TIR, a letter ruling includes a high technology comfort ruling.

.02—Determination letter

A “determination letter” is a written determination issued by the Rules Office that applies the principles and precedents previously announced by the Department to a specific set of facts. It is issued only when a determination can be made based on clearly established rules in a statute, the regulations, a conclusion in another ruling, or an opinion or court decision that represents the position of the Department.

.03—Information letter

An “information letter” is a statement issued either by the Rules Office or by the Director. It calls attention to a well-established interpretation or principle of tax law without applying it to a specific set of facts. An information letter may be issued if the taxpayer’s inquiry indicates a need for general information or if the taxpayer’s request does not meet the requirements of this TIR and the Department thinks that general information will help the taxpayer. An information letter is advisory only and has no binding effect on the Department. The taxpayer should provide a daytime telephone number with the taxpayer’s request for an information letter.

.04—Oral Advice

(a) No oral rulings and no written rulings in response to oral requests.

The Department does not orally issue letter rulings or determination letters, nor does it issue letter rulings or determination letters in response to oral requests from taxpayers. Tax Department employees ordinarily will discuss with taxpayers or their representatives inquiries regarding whether the Department will rule on particular issues and questions relating to procedural matters about submitting requests for letter rulings or determination letters for a particular case.

(b) Discussion possible on substantive issues.

At the discretion of the Department and as time permits, substantive issues also may be discussed. Such a discussion will not be binding on the Department in general and cannot be relied upon as a basis for obtaining relief. The Department makes every available effort to make itself available for oral discussions with taxpayers on tax matters.

Substantive tax issues involving the taxpayer that are under examination, in appeals, or in litigation will not be discussed by Department employees not directly involved in the examination, appeal, or litigation of the issues unless the discussion is coordinated with those Department employees who are directly involved in the examination, appeal, or litigation of the issues. The taxpayer or the taxpayer’s representative ordinarily will be asked whether the oral request for advice or information relates to a matter pending before the Department or before any court of law.

If a tax issue is not under examination, in appeals, or in litigation, the tax issue may be discussed even though the issue is affected by a nontax issue pending in litigation.

A taxpayer may seek oral technical guidance from a Department representative when preparing a return or report. Oral guidance is advisory only, and the Department is not bound to recognize it, for example, in the examination of the taxpayer’s return.

The Department does not respond to letters seeking to confirm the substance of oral discussions. Moreover, the absence of a response to such a letter is not a confirmation.

SECTION 3. ON WHAT ISSUES MAY TAXPAYERS REQUEST WRITTEN ADVICE UNDER THIS TAX INFORMATION RELEASE?

Taxpayers may request written advice on any matter relating to Hawaii tax laws within the jurisdiction of the Director of Taxation and the Department.

These issues include, but are not limited to:

- (a) Individual income tax;
- (b) Corporate tax;
- (c) Franchise or public service company tax;
- (d) General excise, use, transient accommodations, or other taxes;
- (e) Tax accounting;
- (f) Passthrough entities;
- (g) Tax exempt, governmental, and charitable organization taxation; or
- (h) Procedural information

SECTION 4. UNDER WHAT CIRCUMSTANCES DOES THE DEPARTMENT NOT ISSUE LETTER RULINGS OR DETERMINATION LETTERS?

.01—Ordinarily not if the request involves an issue under examination or consideration, or in litigation

The Department ordinarily does not issue a letter ruling or a determination letter if, at the time of the request the identical issue is involved in the taxpayer's return for an earlier period and that issue—

- (a) is being examined by audit officials;
- (b) is being considered by any appellate review board or tribunal;
- (c) is pending in litigation in a case involving the taxpayer or a related taxpayer;
- (d) has been examined by audit officials or considered by any appeals board or tribunal and the statutory period of limitations on assessment or on filing a claim for refund or credit of tax has not expired; or

(e) has been examined by audit officials or considered by any appeals board or tribunal and a closing agreement covering the issue or liability has not been entered into.

If a return dealing with an issue for a particular year is filed while a request for a letter ruling on that issue is pending, the Rules Office will issue the letter ruling unless it is notified by the taxpayer or otherwise learns that an examination of that issue or the identical issue on an earlier year's return has been started.

.02—Ordinarily not in certain areas because of factual nature of the problem

The Department ordinarily does not issue letter rulings or determination letters in certain areas because of the factual nature of the problem involved or because of other reasons. Issues such as this will be determined in the Department's discretion.

.03—Ordinarily not on which of two entities is a common law employer, whether an agency relationship has been created, or whether a partnership exists

The Department does not ordinarily issue a letter ruling or a determination letter on which of two entities, under common law rules applicable in determining the employer-employee relationship, is the employer, when one entity is treating the worker as an employee, or whether a person is an employee or independent contractor. Furthermore, the Department does not ordinarily issue a letter ruling determining whether an agency relationship has been created or whether a partnership exists.

.04—Generally not to business association or groups

The Department does not issue letter rulings or determination letters to business, trade, or industrial associations or to similar groups concerning the application of the tax laws to members of the group. But groups and associations may submit suggestions of generic issues that could be appropriately addressed in tax information releases.

The Department may issue letter rulings or determination letters to groups or associations on their own tax status or liability if the request meets the requirements of this TIR.

.05—Generally not where the request does not address the tax status, liability, or reporting obligations of the requester

The Department generally does not issue letter rulings or determination letters regarding the tax consequences of a transaction for taxpayers who are not directly involved in the request if the requested letter ruling or determination letter would not address the tax status, liability, or reporting obligations of the requester. For example, a taxpayer may not request a letter ruling relating to the tax consequences of a transaction to a customer or client, if the tax status, liability or reporting obligations of the taxpayer would not be addressed in the ruling, because the customer or client is not directly involved in the letter ruling request. The tax liability of each shareholder is, however, directly involved in a letter ruling on the reorganization of a corporation. Accordingly a corporate taxpayer could request a letter ruling that solely addressed the tax consequences to its shareholders

of a proposed reorganization. Likewise, it is acceptable for an entity to request a comfort letter ruling regarding potential qualified high technology business (QHTB) status for purposes of the high technology tax incentives under HRS §§ 235-7.3, 235-9.5, or 235-110.9, upon which the QHTB's investors/shareholders/members may rely.

.06—Not on frivolous issues

The Department will not issue a letter ruling or a determination letter on frivolous issues. A “frivolous issue” is one without basis in fact or law, or that espouses a position which has been held by the courts to be frivolous or groundless. Examples of frivolous or groundless issues include, but are not limited to:

- (a) frivolous “constitutional” claims, such as claims that the requirement to file tax returns and pay taxes constitutes an unreasonable search barred by the Fourth Amendment; violates Fifth and Fourteenth Amendment protections of due process; violates Thirteenth Amendment protections against involuntary servitude; is unenforceable because the Sixteenth Amendment does not authorize nonapportioned direct taxes or because it was never ratified; or any argument of unconstitutionality under the Hawaii Constitution;
- (b) claims that income taxes are voluntary, that the term “income” is not defined in the Internal Revenue Code or Hawaii law;
- (c) claims that a person is not taxable on income because he or she falls within a class entitled to “reparation claims” or an extra-statutory class of individuals exempt from tax, *e.g.*, “free-born” individuals;
- (d) claims that a taxpayer can refuse to pay taxes on the basis of opposition to certain governmental expenditures;
- (e) claims that taxes apply only to federal or state employees; only to residents of Puerto Rico, Guam, the U.S. Virgin Islands, the District of Columbia, or “federal enclaves;”
- (f) claims that wages or personal service income are not “income,” are “nontaxable receipts,” or are a “nontaxable exchange for labor;”
- (g) claims that income tax withholding by an employer on wages is optional; or
- (h) other claims that the courts have characterized as frivolous or groundless.

.07—Not on alternative plans or hypothetical situations

The Department will not issue a letter ruling or a determination letter on alternative plans of proposed transactions or on hypothetical situations.

SECTION 5. WHAT ARE THE GENERAL INSTRUCTIONS FOR REQUESTING LETTER RULINGS?

This section explains the general instructions for requesting letter rulings.

.01—Facts and the submission of Form A-7

Complete statement of facts and other information.

Each request for a letter ruling must contain a complete statement of all facts relating to the transaction. These facts include—

- (1) names, addresses, telephone numbers, and taxpayer identification numbers of all interested parties (the term “all interested parties” does not mean all shareholders of a widely held corporation requesting a letter ruling relating to a reorganization, or high technology comfort ruling, or all employees where a large number may be involved);
- (2) the annual accounting period, and the overall method of accounting (cash or accrual) for maintaining the accounting books and filing the federal and state income tax returns, of all interested parties;
- (3) a description of the taxpayer’s business operations;
- (4) a complete statement of the business reasons for the transaction; and
- (5) a detailed description of the transaction.

Submission of Form A-7

All requests for a letter ruling must be accompanied by a fully completed and executed Form A-7, Request for a Ruling. If a taxpayer or authorized representative fails to include Form A-7 with the person's request for a ruling, a Rules Office representative will contact the person and advise them that Form A-7 must be completed before any further progress is made on the requested ruling. A request for a letter ruling will not be considered complete until Form A-7 has been received. Failure to provide the Form A-7 within the time prescribed by the Rules Office representative will result in the closing of the ruling request.

.02—Documents and material laws

Copies of all contracts, wills, deeds, agreements, instruments, and other documents.

True copies of all contracts, wills, deeds, agreements, instruments, trust documents, proposed disclaimers, and other documents pertinent to the transaction must be submitted with the request.

If the request concerns a corporate distribution, reorganization, or similar transaction, the corporate balance sheet and profit and loss statement should also be submitted. If the request relates

to a prospective transaction, the most recent balance sheet and profit and loss statement should be submitted.

Each document, other than the request, should be labeled and attached to the request in alphabetical sequence. Original documents, such as contracts, wills, *etc.*, should not be submitted because they become part of the Department's file and will not be returned.

.03—Analysis

Analysis of material facts.

The request must be accompanied by an analysis of facts and their bearing on the issue or issues. If documents attached to a request contain material facts, they must be included in the taxpayer's analysis of facts in the request rather than merely incorporated by reference.

.04—Statement regarding earlier return

Statement regarding whether same issue is in an earlier return.

The request must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives, any return of the taxpayer (or any return of a related taxpayer or of a member of an affiliated group of which the taxpayer is also a member) that would be affected by the requested letter ruling is under examination, before any appeals board or tribunal, or a court of law.

.05—Same or similar issue

Statement regarding whether same or similar issue was previously ruled on or requested, or is currently pending.

The request must state whether, to the best of the knowledge of both the taxpayer and the taxpayer's representatives—

- (a) the Department previously ruled on the same or a similar issue for the taxpayer (or a related taxpayer or a member of an affiliated group of which the taxpayer is also a member (related taxpayer)) or a predecessor;
- (b) the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted a request involving the same or a similar issue to the Department but no letter ruling was issued;
- (c) the taxpayer, a related taxpayer, or a predecessor previously submitted a request involving the same or a similar issue that is currently pending with the Department;
or
- (d) at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request involving the same or a similar issue to the Department.

If the statement is affirmative for (a), (b), (c), or (d) of this section, the statement must give the date the request was submitted, the date the request was withdrawn or ruled on, if applicable, and other details of the Department's consideration of the issue.

.06—Statement of Supporting Authorities

If the taxpayer advocates a particular conclusion, an explanation of the grounds for that conclusion and the relevant authorities to support it must be included. Even if not advocating a particular tax treatment of a proposed transaction, the taxpayer must still furnish views on the tax results of the proposed transaction and a statement of relevant authorities to support those views.

In all events, the request must include a statement of whether the law in connection with the request is uncertain and whether the issue is adequately addressed by relevant authorities.

.07—Statement of Opposing Authorities

The taxpayer is also encouraged to inform the Department about, and discuss the implications of, any authority believed to be contrary to the position advanced, such as legislation, tax treaties, court decisions, regulations, administrative rules, notices, revenue rulings, revenue procedures, tax information releases, tax advisories, or announcements. If the taxpayer determines that there are no contrary authorities, a statement in the request to this effect would be helpful. If the taxpayer does not furnish either contrary authorities or a statement that none exists, the Department in complex cases or those presenting difficult or novel issues may request submission of contrary authorities or a statement that none exists. Failure to comply with this request may result in the Department's refusal to issue a letter ruling.

Identifying and discussing contrary authorities will generally enable Department personnel to understand the issue and relevant authorities more quickly. When Department personnel receive the request, they will have before them the taxpayer's thinking on the effect and applicability of contrary authorities. This information should make research easier and lead to earlier action by the Department. If the taxpayer does not disclose and distinguish significant contrary authorities, the Department may need to request additional information, which will delay action on the request.

.08—Statement of pending legislation

At the time of filing the request, the taxpayer must identify any pending legislation that may affect the proposed transaction. In addition, if legislation is introduced after the request is filed but before a letter ruling is issued, the taxpayer must notify the Department.

.09—Statement identifying information to be deleted from copy of letter ruling for public release

Beginning with letter ruling requests received on or after the issuance date of this TIR, the Department will be releasing the text of letter rulings for public inspection. Submission of a letter ruling request constitutes permission of the taxpayer for the Department to publicly release the redacted document.

The Department will be making deletions from the text before public release is made. To assist the Department in making its deletions, a request for a letter ruling must be accompanied by a statement indicating the deletions desired ("deletion statement"). If the deletion statement is not submitted with the request, a Rules Office representative will tell the taxpayer that the request will be closed if the Department does not receive the deletion statement within 21 days.

A taxpayer who wants only names, addresses, and identifying numbers to be deleted should state this in the deletion statement. If the taxpayer wants more information deleted, the deletion statement must be accompanied by a copy of the request on which the taxpayer should bracket and strikethrough the material to be deleted (*e.g.*, [~~this is an example of deleted material~~]).

If the taxpayer decides to ask for additional deletions before the letter ruling is issued, additional deletion statements may be submitted.

The deletion statement must accompany the letter ruling request as a separate document.

The deletion statement must be signed and dated by the taxpayer or the taxpayer's authorized representative.

The letter ruling will be publicly released in the redacted form requested by the taxpayer in the deletion statement. Should the Department disagree with the deletion statement submitted by the taxpayer, the Department will contact the taxpayer or authorized representative and use its best efforts to resolve the disagreement in order to provide the public with thoughtful and thorough information regarding the contents of the document, while simultaneously taking into account the taxpayer's interests in limiting disclosure of certain items. If resolution of a disagreement regarding the contents of the redacted format cannot be resolved, no ruling will be issued.

Determination letters and information letters will not be released in redacted form for public inspection because these documents apply well-settled authority to the facts of a specific case.

.10—Signature

The request for a letter ruling must be signed and dated by the taxpayer or the taxpayer's authorized representative. A stamped signature or faxed signature is not permitted.

.11—Authorized representative

To sign the request or to represent the interest of the taxpayer, the authorized representative must be an attorney, certified public accountant, or other person authorized to represent the taxpayer. All representatives must properly complete and submit the Department's Form N-848, Power of Attorney authorization form.

.12—Representative based upon relationship

A regular full-time employee representing his or her employer; a general partner representing his or her partnership; a *bona fide* officer representing his or her corporation, association, or organized group; a regular full-time employee representing a trust, receivership, guardianship, or estate; or an individual representing an immediate family member may sign the request or appear before the Department in connection with the request.

.13—Power of attorney

Any written requests for advice from the Department, made by a representative on behalf of a taxpayer, must be accompanied by Form N-848, Power of Attorney and Declaration of Representative. The Form N-848 should be included with the letter ruling or determination letter request for timelier processing. Following receipt of written request for an advice letter, the execution of Form N-848 may be requested by Department personnel if not already included.

.14—Penalties of perjury statement

A request for a letter ruling and any change in the request submitted at a later time must be accompanied by the following declaration:

“Under penalties of law, including those set forth under HRS § 231-36, I declare that I have examined [Insert, as appropriate: this request or this modification to the request], including accompanying documents, and, to the best of my knowledge and belief, [Insert, as appropriate: the request or the modification] contains all the relevant facts relating to the request, and such facts are true, correct, and complete.”

The declaration must be signed and dated by the taxpayer, not the taxpayer’s representative. A stamped signature or faxed signature is not permitted.

The person who signs for a corporate taxpayer must be an officer or employee of the corporate taxpayer who has personal knowledge of the facts and whose duties are not limited to obtaining a letter ruling from the Department. If the corporate taxpayer is a member of an affiliated group filing consolidated returns, a penalties of perjury statement must also be signed and submitted by an officer of the common parent of the group.

The person signing for a trust, a partnership, or a limited liability company must be, respectively, a trustee, general partner, or member-manager who has personal knowledge of the facts.

.15—Number of copies

A taxpayer needs to submit the original and one copy of the request for a letter ruling.

.16—Separate letters for multiple issues

If more than one issue is presented in a request for a letter ruling, the Rules Office generally will issue a single letter ruling covering all the issues. If the taxpayer requests separate letter rulings on any of the issues (because, for example, one letter ruling is needed sooner than another), the Rules Office usually will comply with the request unless it is not feasible or not in the best interests of the Rules Office to do so. A taxpayer who wants separate letter rulings on multiple issues should make this clear in the request and submit the original and two copies of the request.

.17—Request may be withdrawn or Rules Office may decline to issue letter ruling or determination letter

A taxpayer may withdraw a request for a letter ruling or determination letter at any time before the letter ruling or determination letter is issued by the Department. Furthermore, the Rules Office may unilaterally decline to issue a letter ruling or determination letter in its sole discretion. Correspondence and exhibits related to a request that is withdrawn or related to a letter ruling request for which the Rules Office declines to issue a letter ruling will not be returned to the taxpayer.

SECTION 6. HOW DOES THE RULES OFFICE HANDLE LETTER RULING REQUESTS?

.01—Contact within 21 days

Within 21 calendar days after a letter ruling request has been received by the Department, a representative of the Rules Office will discuss the procedural issues in the letter ruling request with the taxpayer or, if the request includes a properly executed power of attorney, with the authorized representative unless the power of attorney provides otherwise. If the case is complex or a number of issues are involved, it may not be possible for the representative to discuss the substantive issues during this initial contact. When possible, the Department representative will tell the taxpayer—

- (a) whether the representative will recommend that the Rules Office rule as the taxpayer requested, rule adversely on the matter, or not rule;
- (b) whether the taxpayer should submit additional information to enable the Rules Office to rule on the matter;
- (c) whether the letter ruling complies with all of the provisions of this TIR, and if not, which requirements have not been met; or
- (d) whether, because of the nature of the transaction or the issue presented, a tentative conclusion on the issue cannot be reached.

.02—Modifications to allow a favorable ruling

If less than a fully favorable letter ruling is indicated, the Department representative will tell the taxpayer whether minor changes in the transaction or adherence to certain positions would bring about a favorable ruling. The representative may also tell the taxpayer the facts that must be furnished in a document to comply with Department requirements.

.03—Not bound by informal opinion

The Department will not be bound by the informal opinion expressed by the Department representative, and such an opinion cannot be relied upon as a basis for obtaining any relief.

.04—Follow-up response required within 21 days

If the request lacks essential information, which may include additional information needed to satisfy the procedural requirements of this TIR as well as substantive changes to transactions or documents needed from the taxpayer, the Department representative will tell the taxpayer during the initial contact, or subsequent contacts, that the request will be closed if the Rules Office does not receive the information within 21 calendar days from the date of the request for additional information, unless an extension of time is granted.

Material facts furnished to the Rules Office by telephone, or orally at a conference, must be promptly confirmed by letter to the Rules Office and contain the penalties of perjury declaration in Section 6.06. This confirmation and any additional information requested by the Rules Office that is not part of the information requested during the initial contact must be furnished within 21 calendar days from the date the Rules Office makes the request.

An extension of the 21-day period for providing additional information will be granted only if justified in writing by the taxpayer and approved by the Rules Officer. A request for extension should be submitted before the end of the 21-day period. If unusual circumstances close to the end of the 21-day period make a written request impractical, the taxpayer should notify the Rules Office within the 21-day period that there is a problem and that the written request for extension will be coming soon. The taxpayer will be told promptly of the approval or denial of the requested extension. If the extension request is denied, there is no right of appeal.

.05—Ruling request closed for failure to timely respond

If the taxpayer does not submit the information requested during the initial contact, or subsequent contacts, within the time provided, the letter ruling request will be closed and the taxpayer will be notified in writing. **If the information is received after the request is closed, the request will be reopened and treated as a new request as of the date the information is received.**

.06—Penalty of perjury statement

Additional information submitted to the Rules Office must be accompanied by the following declaration:

“Under penalties of law, including those set forth under HRS § 231-36, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.”

This declaration must be signed in accordance with the requirements in this TIR. Please see the requirements under Section 5.14.

.07—Request for drafting of letter ruling

To accelerate the issuance of letter rulings, in appropriate cases near the completion of the ruling process, the Rules Office representative may request that the taxpayer or the taxpayer’s representative submit a proposed draft of the letter ruling on the basis of discussions of the issues. The taxpayer is not required to prepare a draft letter ruling to receive a letter ruling. The format of the submission should be discussed with the Rules Office representative who requests the draft letter ruling. In any event, a requested form of letter ruling or determination letter may be submitted with the initial submission request.

SECTION 7. WHAT EFFECT WILL A LETTER RULING HAVE?

.01—Relied upon, subject to limitations

A taxpayer ordinarily may rely on a letter ruling received from the Rules Office subject to the conditions and limitations described in this section.

.02—Will not apply to another taxpayer

A taxpayer may not rely on a letter ruling issued to another taxpayer.

.03—Use with determining liability

When determining a taxpayer’s liability, the audit official must ascertain whether—

- (a) the conclusions stated in the letter ruling are properly reflected in the return;
- (b) the representations upon which the letter ruling was based reflected an accurate statement of the controlling facts;
- (c) the transaction was carried out substantially as proposed; and

(d) there has been any change in the law that applies to the period during which the transaction or continuing series of transactions were consummated.

.04—Revocation

A letter ruling found to be in error or not in accord with the current views of the Department may be revoked or modified. If a letter ruling is revoked or modified, the revocation or modification applies to all years open under the period of limitations unless the Department uses its discretionary authority to limit the retroactive effect of the revocation or modification.

A letter ruling may be revoked or modified by —

- (a) a letter giving notice of revocation or modification to the taxpayer to whom the letter ruling was issued;
- (b) the enactment of legislation;
- (c) a decision of any court;
- (d) the issuance of regulations; or
- (e) the issuance of statement by the Department, for example, in a tax information release or announcement.

Consistent with these provisions, if a letter ruling relates to a continuing action or a series of actions, it ordinarily will be applied until any one of the events described above occurs or until it is specifically withdrawn.

Publication of a notice of proposed rulemaking will not affect the application of any letter ruling issued under this TIR.

Where a letter ruling is revoked or modified by a letter to the taxpayer, the letter will state whether the revocation or modification is retroactive. Where a letter ruling is revoked or modified by the issuance of administrative rules or regulations or by the publication of a statement of the Department, the document may contain a statement as to its retroactive effect on letter rulings.

.05—Letter ruling revoked or modified based on material change in facts applied retroactively

The Rules Office will revoke or modify a letter ruling and apply the revocation retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling if—

- (a) there has been a misstatement or omission of controlling facts; or
- (b) the facts at the time of the transaction are materially different from the controlling facts on which the letter ruling was based; or

(c) if the transaction involves a continuing action or series of actions, the controlling facts change during the course of the transaction.

.06—Not otherwise generally revoked or modified retroactively

Where the revocation or modification of a letter ruling is for reasons other than a change in facts as described in this TIR, it will generally not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling; provided that—

- (a) there has been no change in the applicable law;
- (b) the letter ruling was originally issued for a proposed transaction; and
- (c) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment. For example, the tax liability of each shareholder is directly involved in a letter ruling on the reorganization of a corporation. The shareholders' reliance on the letter ruling may, depending on all facts and circumstances, be in good faith. The tax liability of a member of an industry, however, is not directly involved in a letter ruling issued to another member of the same industry and, therefore, a nonretroactive revocation or modification of a letter ruling to one member of an industry will not extend to other members of the industry who have not received letter rulings. By the same reasoning, a tax practitioner may not extend to one client the non-retroactive application of a revocation or modification of a letter ruling previously issued to another client.

If a letter ruling is revoked or modified by a letter with retroactive effect, the letter will, except in fraud cases, state the grounds on which the letter ruling is being revoked or modified and explain the reasons why it is being revoked or modified retroactively.

.07—Retroactive effect of revocation or modification applied to a particular transaction

A letter ruling issued on a particular transaction represents a holding of the Department on that transaction only. It will not apply to a similar transaction in the same year or any other year. And, except in unusual circumstances, the application of that letter ruling to the transaction will not be affected by the later issuance of administrative rules or regulations.

If a letter ruling on a transaction is later found to be in error or no longer in accord with the position of the Department, it will not protect a similar transaction of the taxpayer in the same year or later year.

.08—Retroactive effect of revocation or modification applied to a continuing action or series of actions

If a letter ruling is issued covering a continuing action or series of actions and the letter ruling is later found to be in error or no longer in accord with the position of the Department, the

Department ordinarily will limit the retroactive effect of the revocation or modification to a date that is not earlier than that on which the letter ruling is revoked or modified. For example, the retroactive effect of the revocation or modification of a letter ruling covering a continuing action or series of actions ordinarily would be limited in the following situation when the letter ruling is in error or no longer in accord with the position of the Department:

- (a) A taxpayer received a letter ruling that certain payments are excludable from gross income for state income tax purposes. The taxpayer ordinarily would be protected only for the payment received after the letter ruling was issued and before the revocation or modification of the letter ruling.

.09—May be retroactively revoked or modified when transaction is entered into before the issuance of the letter ruling

A taxpayer is not protected against retroactive revocation or modification of a letter ruling involving a transaction completed before the issuance of the letter ruling or involving a continuing action or series of actions occurring before the issuance of the letter ruling because the taxpayer did not enter into the transaction relying on a letter ruling.

SECTION 8. WHAT EFFECT WILL A DETERMINATION LETTER HAVE?

.01—Same effect as letter ruling

A determination letter issued by the Department has the same effect as a letter ruling issued to a taxpayer under this TIR.

SECTION 9. WHAT ARE THE FEES ASSOCIATED WITH LETTER RULINGS OR DETERMINATION LETTERS?

.01—Generally, no fees are assessed

Except as discussed in Section 9.02, below, there are no fees or other costs associated with a request for a letter ruling or determination letter from the Department.

.02—Fees required for certain comfort rulings

Pursuant to Hawaii Administrative Rule § 18-235-20.5-01, the Department is authorized to assess fees associated with high technology comfort ruling requests. For purposes of the fee imposition, a comfort ruling is defined as a ruling concerning the application of the following high technology tax incentives:

- (1) The high technology business investment tax credit under HRS § 235-110.9;

- (2) The income tax exclusion for royalties and other income derived from patents and copyrights received by an individual or a qualified high technology business and developed and arising out of a qualified high technology business under HRS § 235-7.3;
- (3) The income tax exclusion for stock options, dividends from stock, the receipt of options, the exercise of the options, and income from the sale of the options under HRS § 235-9.5; or
- (4) The tax credit for research activities under HRS § 235-110.91.

For more information regarding the imposition of fees for certain high technology comfort rulings, *see* Department of Taxation Announcement No. 2005-19.



KURT KAWAFUCHI
Director of Taxation

APPENDIX A

SAMPLE FORMAT FOR A LETTER RULING REQUEST

INSTRUCTIONS

To assist you in preparing a letter ruling request, the Department is providing this sample format. You are not required to use this sample format. If your request is not identical or similar to the sample format, the different format will not defer consideration of your request.

(Insert the date of request)

Dear Sir or Madam:

(Insert the name of the taxpayer) requests a ruling on the proper treatment of *(insert the subject matter of the letter ruling request)* under section *(insert the number)* of the Hawaii Revised Statutes.

A. STATEMENT OF FACTS

1. Taxpayer Information

[Provide the statements required]

2. Description of Taxpayer's Business Operations

[Provide the statement required]

3. Facts Relating to Transaction

[The ruling request must contain a complete statement of the facts relating to the transaction that is the subject of the letter ruling request. This statement must include a detailed description of the transaction, including material facts in any accompanying documents, and the business reasons for the transaction.]

B. RULING REQUESTED

[The ruling request should contain a concise statement of the ruling requested by the taxpayer. It is preferred that the language of the requested ruling be exactly the same as that the taxpayer wishes to receive.]

C. STATEMENT OF LAW

[The ruling request must contain a statement of the law in support of the taxpayer's views or conclusion and identify any pending legislation that may affect the proposed transaction. The taxpayer also is encouraged to identify and discuss any authorities believed to be contrary to the position advanced in the ruling request.]

D. ANALYSIS

[The ruling request must contain a discussion of the facts and an analysis of the law. The taxpayer also is encouraged to identify and discuss any authorities believed to be contrary to the position advanced in the ruling request.]

E. CONCLUSION

[The ruling request should contain a statement of the taxpayer's conclusion on the ruling requested.]

F. PROCEDURAL MATTERS

1. TIR Procedural Statements

- a. [Provide the statement required regarding whether the same issue in the letter ruling request is in an earlier return of the taxpayer or in a return for any year of a related taxpayer.]
- b. [Provide the statement required regarding whether the Department previously ruled on the same or similar issue for the taxpayer, a related taxpayer, or a predecessor.]
- c. [Provide the statement required regarding whether the taxpayer, a related taxpayer, a predecessor, or any representatives previously submitted a request involving the same or similar issue but withdrew the request before a letter ruling or determination letter was issued.]
- d. [Provide the statement required regarding whether the taxpayer, a related taxpayer, or a predecessor previously submitted a request involving the same or a similar issue that is currently pending with the Department.]
- e. [Provide the statement required regarding whether, at the same time as this request, the taxpayer or a related taxpayer is presently submitting another request involving the same or similar issue to the Department.]
- f. [Provide the statement required regarding whether the law in connection with the letter ruling request is uncertain and whether the issue is adequately addressed by relevant authorities.]
- g. [If the taxpayer determines that there are no contrary authorities, a statement to that effect would be helpful.]
- h. [If the taxpayer is requesting a copy of any document related to the letter ruling request to be sent by facsimile (fax) transmission, the ruling request should contain a statement to that effect.]
- i. [If the taxpayer is requesting separate letter rulings on multiple issues, the letter ruling request should contain a statement to that effect.]

2. Administrative

- a. [If the taxpayer's authorized representative is to sign the letter ruling request or is to appear before the Department in connection with the request, the ruling request should state: "A Power of Attorney is enclosed." See sections 5.10; 5.11; and 5.12.]
- Sincerely yours,

(Insert the name of the taxpayer or the taxpayer's authorized representative)

By:

Date

Signature

Typed or printed name of person signing request

DECLARATION:

Under penalties of law, including those set forth under HRS § 231-36, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete.

(Insert the name of the taxpayer)

By:

Signature

Date

Title

Typed or printed name of person signing declaration

[If the taxpayer is a corporation that is a member of an affiliated group filing consolidated returns, the above declaration must also be signed and dated by an officer of the common parent of the group.]