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## TAX INFORMATION RELEASE

No. 91-10

RE: Bulk Sales Procedures Effective January 1, 1992

The purpose of this Tax Information Release is to remind taxpayers of the statutory bulk sales requirements and to notify them of new Department of Taxation procedures which will go into effect on January 1, 1992.

Section 237-43, Hawaii Revised Statutes (HRS), requires that a seller (or buyer) make a written verified report to the Department in the case of any sale in bulk of the whole, or a large part of a stock of merchandise and fixtures, or merchandise, or fixtures, or other assets of a business, otherwise than in the ordinary course of trade, and in the regular and usual prosecution of the seller's business. Upon receipt of the report and review of the general excise tax situation of the seller, the Department is then required to:

1. Issue a certificate to the effect that all taxes, penalties, and interest levied or accrued under the General Excise Tax Law against the seller, or constituting a lien upon the property, have been paid, including any taxes due on the bulk sale; or
2. To withhold issuing the certificate until payment of any outstanding general excise taxes, including any taxes due on the bulk sale.

Failure to obtain the bulk sales certificate makes the buyer personally liable under section 237-43(c), HRS, for any levied or accrued general excise taxes, penalties, and interest, including any taxes due on the bulk sale. All such general excise taxes must be paid through the date of the bulk sale prior to issuance of the bulk sale certificate. The liability of the buyer for the seller's unpaid general excise taxes cannot exceed the purchase price of the bulk sale paid by the buyer.

Effective January 1, 1992, the Departments bulk sale procedures also shall require the review and determination of all delinquent taxes. The seller shall be notified of other delinquent taxes, in addition to general excise taxes, and the seller shall be requested to pay all general excise taxes and all delinquent State taxes of any sort before the bulk sale certificate is issued. (Note: Delinquent taxes are a matter of public record under section 231-32, HRS.)

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If the seller pays all general excise taxes due and does not pay other delinquent taxes in full and the seller and the buyer wish to pursue the bulk sale transaction, a bulk sale certificate may still be obtained. Section 237-43, HRS, requires the Department to issue a bulk sales certificate if the requirements of the section are met. Therefore, under section 237-43, HRS, the bulk sales certificate could issue without the payment of other delinquent taxes. Accordingly, if the seller insists upon the issuance of the bulk sales certificate without the payment of other delinquent taxes, in order to protect the State's interest, the Department will immediately record a lien for the outstanding delinquent State taxes on all of the seller's property and then issue the bulk sales certificate. In order to avoid this possibility, the buyer should require the seller to obtain a tax clearance as well as a bulk sales certificate.

  
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HRS Section Explained: 237-43