BENJAMIN J. CAYETANO
GOVERNOR

MAZIE HIRONO
LT. GOVERNOR

RAY K. KAMIKAWA
DIRECTOR OF TAXATION

SUSAN K. INOUYE
DEPUTY DIRECTOR

DEPARTMENT OF TAXATION
STATE OF HAWAII
P.O. BOX 259
Honolulu, Hawaii 96809

February 28, 1996

TAX INFORMATION RELEASE NO. 96-2

RE: Application of the Original Package Doctrine to the General Excise and Use Taxes

The purpose of this Tax Information Release is to advise taxpayers that the "original package doctrine" does not apply to the general excise and use taxes.

The original package doctrine was established in two United States Supreme Court decisions, Brown v. Maryland, 25 U.S. 419 (1827), and Low v. Austin, 80 U.S. 29 (1872), as a test to determine whether a state tax on imported articles violated the Import-Export Clause of the United States Constitution (Article 1, § 10, cl. 2). The Import-Export Clause prohibits individual states from levying any impostor duty on imports and exports, except for necessary inspection fees. Those cases held that, while an article is in its original package, a state is prohibited from imposing a tax on the article.

On July 21, 1964, the Attorney General, in Opinion No. 64-38, advised the Department that general excise and use taxes may not be applied to imports in their original package because of the doctrine.

In Michelin Tire Corp. v. Wages, 423 U.S. 276 (1976), and as substantiated in subsequent cases, the U.S. Supreme Court overruled the original package doctrine. On October 17, 1994, the Attorney General issued Opinion No. 94-2, which, in light of that case, concluded that the general excise and use taxes maybe applied to imported goods no longer in transit, whether or not the goods were in their original packages. Opinion No. 94-2 further concluded that application of the general excise and use taxes to goods in their original packages does not violate the Import-Export Clause of the U.S. Constitution.

The Department of Taxation follows Opinion No. 94-2. Interested persons may obtain a copy of this opinion from the lieutenant governor's office, the supreme court library, or the legislative reference bureau.

RAY K. KAMIKAWA
Director of Taxation

HRS Sections Explained: HRS §§237-13(2), 237-22, 238-2

RKK-TY-JL