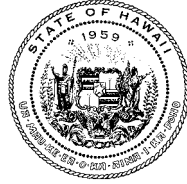


LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



STANLEY SHIRAKI
DIRECTOR OF TAXATION

RONALD B. RANDALL
ACTING DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

October 1, 2010

DEPARTMENT OF TAXATION TAX INFORMATION RELEASE NO. 2010-08

Re: Act 91, Session Laws of Hawaii 2010, Relating to General Excise Tax

On May 11, 2010, Governor Linda Lingle signed into law Senate Bill 2643 SD 1 HD 1 CD 1, which became law as Act 91, Session Laws of Hawaii 2010.

Act 91 Description

Section 237-24.7(1) of the Hawaii Revised Statutes ("HRS"), provides that amounts received by the operator of a hotel from the owner of the hotel that are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums and benefits, including retirement, vacation, sick pay, and health benefits, are not subject to general excise tax. In 2007, Act 239, Session Laws of Hawaii ("SLH") 2007, amended section 237-24.7(1) to provide for the same treatment as described above for amounts received by (1) the operator of a hotel from a timeshare association; and (2) the suboperator of a hotel from the owner of the hotel, from a timeshare association, or from the operator of the hotel. The definition of "hotel" was amended to include "a timeshare plan as defined in section 514E-1." Act 239 also added the definition of suboperator to mean "any person who, pursuant to a written contract with the operator, operates or manages the hotel as a subcontractor of the operator."

The general excise tax exemptions for operators of a timeshare plan and suboperators of hotels and timeshare plans added by Act 239 were set to expire on December 31, 2009. In 2009, in Act 196, SLH 2009, the exemptions added by Act 239 were extended until December 31, 2010, provided that the aggregate tax exemption for the Act 239 amendments did not exceed \$400,000 per taxable year ending on or between January 1, 2010 and January 1, 2011. This cap language could be interpreted to mean that the \$400,000 applied to gross receipts, not tax.

In 2010, Act 91, SLH 2010, extended the amendments to section 237-24.7(1) made by Act 239, SLH 2007, until December 31, 2014. Act 91, SLH 2010, also clarified that the general excise tax exemption provided by the amendments to section 237-24.7(1) that were enacted in Act 239, SLH 2007, were limited to \$400,000 in tax per calendar year in the aggregate for all taxpayers. Act 91 is effective on July 1, 2010.

Implementation of Act 91 for Calendar Year 2010

Effective immediately, taxpayers who are eligible for the exemptions subject to the \$400,000 cap must cease claiming these exemptions on their general excise tax returns, whether the taxpayer is filing Form G-45, "Periodic General Excise/Use Tax Return" or Form G-49, "Annual Return and Reconciliation of General Excise/Use Tax Return." No taxpayer with a fiscal year ending in 2010, may claim the exemption subject to the cap on their Form G-49 but these taxpayers will be allowed to use their allocated portion of the \$400,000 cap for calendar year 2010 on their returns filed in 2011 that cover a portion of the 2010 calendar year. Fiscal year taxpayers who have already filed their Form G-49 for any tax year ending in 2010 and claimed the exemption subject to the cap must file an amended Form G-49 and pay any tax due. Taxpayers may request that the Department waive penalties and interest on payments made on an amended Form G-49 in this situation.

Taxpayers who are eligible for the exemptions subject to the cap must apply after December 31, 2010, with the Department to determine what portion of the taxpayer's gross receipts will be covered by the exemption on Form G-79, "Hotel Operator/Suboperator Deduction Certificate," as described below. Calendar year taxpayers will have to adjust their tax liability on the Form G-49, depending on how much of their gross receipts are covered by the exemption amount determined by the Department.

Implementation of Act 91 for Calendar Years 2011, 2012, 2013, and 2014

Beginning in calendar year 2011, calendar year taxpayers eligible to claim the exemptions covered by the aggregate \$400,000 cap may not claim these exemptions on Form G-45, the periodic general excise tax return. These exemptions can only be claimed on Form G-49, the annual return, after the taxpayer has filed Form G-79 and has been notified by the Department of the taxpayer's allocable share of the \$400,000 cap. Form G-79 must be filed on or before March 15th of each year. The Department will return the Form G-79 to the taxpayer with a certification of the exemption amount that may be claimed by the taxpayer. Form G-79 must be attached to the taxpayer's Form G-49 in order to claim the exemption. No extensions of time to file Form G-79 will be granted for the March 15th filing deadline. In addition, any amended Form G-79 must be filed with the Department on or before March 15th. Any Form G-79 filed after March 15th will be disregarded. Any taxpayer filing a Form G-79 after March 15th will not be allocated any of the \$400,000 exemption cap and will not be entitled to claim any exemption subject to the cap.

Allocation of Aggregate \$400,000 Cap


The Department will allocate the \$400,000 tax exemption amount cap on a pro rata basis. Taxpayers will apply with the Department, after December 31st of any given calendar year to receive their share of the tax cap amount. Form G-79 will be due by March 15th following the close of the calendar year for which the cap will be determined. The Department will then determine the total of all tax, including the county surcharge, on gross receipts from activities covered by the exemption subject to the cap for all taxpayers, then grant an exemption based on the percentage of the \$400,000 tax cap amount to each taxpayer that is the percentage of that particular taxpayer's tax, including county surcharge, for the gross receipts from activities covered by the exemption subject to the cap, compared to the total tax, including county surcharge, for the gross receipts from activities covered

by the exemption subject to the cap, for all taxpayers applying for the exemption. The Department will rely on the taxpayer's reporting of their gross receipts on the Form G-79 as accurate and not allow any subsequent adjustments to a taxpayer's gross receipts to cause a readjustment of the allocation of the exemption amounts under the cap. Form G-79 will NOT be accepted after March 15th. This will ensure that the Department will be able to timely certify all claims.

Fiscal Year Taxpayers

Taxpayers who file on a fiscal year basis will apply for the exemption for periods that are covered over two fiscal years by filing Form G-79 after December 31st of any given calendar year and claim the certified exemption amount on the fiscal year return within which the given December 31st date lands. For example, if a taxpayer's year ends on June 30, 2010, which covers July through December of 2009 and January through June of 2010, the taxpayer must file Form G-79, after December 31, 2010 and on or before March 15, 2011, for the entire 2010 calendar year. The taxpayer will use the exemption amount allocated to them for the 2010 calendar year either on their annual return, Form G-49, for their year ending on June 30, 2011, which is due on October 20, 2011, or on their period returns due after receipt of their certified Form G-79 for fiscal year ending June 30, 2011. However, the Form G-79 should only be attached to a Form G-49 and should not be filed with a Form G-45.

If you have any questions, please contact the Technical Section at 587-1577 or Betty Lam at 587-1533.


STANLEY SHIRAKI
Director of Taxation