



Hawaii Tax News

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State of Hawaii • Department of Taxation

Spring 1997

The Direct Line ☎

By Director Ray K. Kamikawa

I am pleased to welcome you to this first edition of our newsletter for practitioners and interested members of our taxpaying community.

The newsletter will be published quarterly and will contain guidance to practitioners about matters of tax administration and new developments within the department. Recent publications and policy issues will be summarized, along with other items of importance to your practice.

This is the latest in our effort to bring the department in line with practitioner expectations and business practice. In the past two years, we have established a website where you can find and download all of our current forms and publications, our first CD-ROM which contains all of the publications ever issued by the department along with our 1995 and 1996 tax forms, and now our fax on demand capacity which just came on line.

With the reorganization of our Taxpayer Services Branch, even more by way of innovations and communications will be forthcoming. As always, we want to hear from you on any concerns and suggestions that you may have.

Income Tax Deadline

The inevitable end-of-the-tax-season rush is approaching. Everyone is reminded that the deadline for filing individual income tax returns is April 20. However, since April 20 falls on a Sunday this year, returns which are filed by Monday, April 21, 1997, will be considered timely filed.

Persons who cannot file their tax returns on time may apply for an automatic 4-month extension by filing Form N-101A. This form may be obtained at any district tax office, by mail or fax through the Department's 24-hour Forms Request Line, or via the Internet (see the last page for telephone numbers and addresses). Form N-101A must be completed, signed, and filed with the Department by April 21. Any additional tax owed must be attached to the Form N-101A, because the extension is only an extension of time to file the return, not

an extension of time to pay the tax due.

Tax returns and extensions must be RECEIVED by the Department on or before April 21. If mailed through the U.S. Postal Service, however, they only must be postmarked by April 21. Returns and extensions sent via a private delivery service currently are considered filed when they actually are received by the Department. Hawaii has not yet adopted the federal provisions which allow the use of such services in satisfying the timely mailing as timely filing and paying rule.

Although the U.S. Postal Service will NOT have extended hours on April 21, the Department will once again provide curbside service for last minute filers on Oahu. Between the hours of 5:00 P.M. and midnight, taxpayers may drive up to either the Punchbowl or Halekauwila Street sides of the Princess Ruth Keelikolani Building at 830 Punchbowl Street, and simply hand their tax return to a waiting department staff member.

90% Rule For Income Tax Extensions

Section 18-235-98(b)(1), Hawaii Administrative Rules, will be amended to delete the requirement that 90% of the tax liability be paid with the request for extension of time to file an (See 90% Rule, Page 2)

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90% Rule

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income tax return. The amended rules will conform with the temporary regulations that the Internal Revenue Service adopted.

The Department of Taxation's current policy with respect to waiving penalties if taxpayers have not paid 90% of the tax liability is to consider if there is reasonable cause for the late filing of the return and matters related to not meeting the 90% requirement. An example of a reasonable cause would be the late receipt of a Schedule K-1 or amended K-1 with respect to a partnership, S-corporation, or trust income distribution. The Department also reviews the taxpayer's tax returns for the previous two years to see if there was any unusual fluctuation in income that would justify not meeting the 90% payment rule.

Department Reorganization

As of January 10, 1997, the Technical Review Office has been reorganized and the staff divided between two offices, the Rules Office under the Director's Office and the Taxpayer Services Branch.

The Rules Office will serve as the central area for all policy and rules making for the Department. As such, it will provide guidance to the various divisions and offices of the Department on all policy related matters. In doing so, it is intended to promote uniformity of interpretation of the various tax issues which arise throughout the Department.

A Technical Section has been created within the Taxpayer Services Branch. The Department, having recognized the need to provide more efficient and effective taxpayer services to the public and to continually educate taxpayers, felt that these needs could be better met by the reassignment of the former Technical Review Office's operational activities to the Taxpayer Services Branch. Some of these activities include private letter rulings, requests for speakers, workshops, training, conveyance and nonprofit type activities, etc. The new Technical Section staff can be reached at 587-1577.

In late 1996, the Audit Division and the Collection Division were combined into the Compliance Division. In recent compliance projects, we have seen how much value is added when audit and collection functions work

together.

Neighbor island district offices now have one person in charge who is ultimately responsible for all that goes on in the district office.

A new directory of our management personnel is provided for you on Page 4.

Systems Replacement Project Update

The bid process for selecting a contractor to develop a new computer system to take us into the year 2000 and beyond is steadily moving forward.

A number of bids were received, but the final selection had not been made as of our printing deadline. Regardless of which company is eventually chosen, you can be assured that great care is being taken in the selection process.

To make sure that we actually get the best system for our needs, the Department is being allowed by the legislature (Act 273) to enter into a new, performance-based type of contract. That is, instead of the Department developing specific system specifications and finding the lowest bidder to do the job, we merely set the performance goals to be achieved and contract with a company which, in partnership with us, will develop and implement the best system for accomplishing those goals. Importantly, the company will be paid the contracted amount out of the tax revenues generated by the new system which exceed current levels; therefore, nothing will be paid if the performance goals are not met.

Regardless of the favorable terms of this performance-based contract, we cannot afford to fail.

(See Systems Update, Page 3)



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Director: Ray K. Kamikawa
 Editors: Lynne Kuroda & Cathleen Tokishi
 Address: Princess Ruth Keelikolani Building
 830 Punchbowl Street, Room 220
 Honolulu, HI 96813-5045

Telephone: 808-587-1577
 Fax: 808-587-1584
 Web: <http://www.hawaii.gov/tax/tax.html>

Systems Update

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Over the next few years, we will keep you apprised of how our systems replacement project is progressing. Everyone is excited at the prospect of having a computer system which will fully integrate all of our various tax types, and which will move us towards a more efficient filing system with less paper and better access to taxpayer information.

Tax Seminar Offered

A seminar on tax issues affecting contractors will be offered a little later this year. This seminar is specifically intended for businesses involved in the construction trade, including general and specialty contractors, professional engineers, architects, land surveyors, landscape architects, and pest control operators. However, all interested persons are welcome.

Topics will include those covered in the newly released Tax Facts Number 97-1, *Contractors and the General Excise and Use Taxes*, such as the reporting of gross income for general excise tax purposes, claiming of the subcontract deduction, cost-plus contracts, as well as a number of other topics. Participants also will have the opportunity to ask questions of the department staff.

To have a registration form sent to you when they become available, call the Department's Forms Request Line at 587-7572, or toll-free from the neighbor islands and mainland U.S. at 1-800-222-7572, and leave a message on the Forms By Mail voice mail system.

Forms By Fax Service Implemented

Until recently, people without Internet access have either had to get tax forms at their nearest district tax office, or call our Forms Request Line to have their forms mailed in about 5 working days. Now, anyone with access to a fax machine can get a number of our tax forms within 24 hours, if not immediately.

Persons calling on Oahu can now call our updated Forms Request Line at 587-7572, and press "1" to access the Forms By Fax option. Persons calling from anywhere outside Oahu (i.e., from the neighbor islands, mainland

U.S., or anywhere other than Oahu) can call (808) 678-0522 from their fax machine (you'll have to pay the toll charges).

You will need to know the 3-digit document number for the forms you are requesting, and may request up to 3 forms per call. A brochure listing all of the forms available by fax and their corresponding document numbers may be obtained at any district tax office, or faxed to you by following the prompts on the Forms By Fax system. The list also is provided for you here on Page 5.

Recorded Tax Info Available

Did you know that you have access to a tax bulletin board at the touch of your fingertips? For the last year, the State Department of Commerce and Consumer Affairs (DCCA) has permitted the department to include 3 recorded tax information messages on their Consumer Dial recorded information service.

Just call the Consumer Dial line at (808) 587-1234, and press 7700 for a menu of our tax messages. Message 7710 has the latest Tax Office Bulletins to keep you up to date. Message 7720 has the latest refund processing information. And Message 7730 has the latest tax publications. Give it a try sometime!

American Express Case Won!

The Hawaii Supreme Court summarily affirmed the decision of the Tax Appeal Court that the Hawaii use tax was properly imposed on Taxpayer American Express Travel Related Services Company, Inc.'s (the "Taxpayer") importation of merchandise catalogs and promotional materials to Hawaii residents from out-of-state offices. The Supreme Court's decision joins the modern trend towards imposition of local use taxes on advertising and promotional materials, including D.H. Holmes Co., Ltd. v. McNamara, 486 U.S. 24 (1988) in which the United States Supreme Court rejected a taxpayer's argument that a Louisiana use tax on catalogs printed outside Louisiana at the taxpayer's direction and shipped to prospective customers within the state violated the Commerce Clause of the United States Constitution.

(See American Express, Page 6)

DIRECTORY OF MANAGEMENT PERSONNEL*

(AS OF MARCH 1997)

OFFICE OF THE DIRECTOR

Ray K. Kamikawa, <i>Director</i>	587-1540
Susan K. Inouye, <i>Deputy Director</i>	587-1540
Grant Tanimoto, <i>Rules Officer</i>	587-1569
Jayna Uyehara, <i>Legislative Coordinator</i>	587-1553

ATTORNEY GENERAL - LEGAL COUNSEL

Kevin Wakayama, <i>Supervising Deputy Attorney General</i>	586-1470
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STAFF OFFICES

Francis Okano, <i>Acting Tax Research and Planning Officer</i>	587-1440
Vacant, <i>Systems and Procedures Officer</i>	587-1755
Warren Higashi, <i>Administrative Services Officer</i>	587-1500
Stanley Onaga, <i>Personnel Officer</i>	587-1503

OPERATIONS STAFF

Compliance Division

Vacant, <i>Taxation Compliance Administrator</i>	587-1611
Richard Chiogioji, <i>Tax Audit Technical Coordinator</i>	587-1611
Melvin Wakumoto, <i>Returns Classifying Officer</i>	587-1611
Pauline Fukumura, <i>Acting Tax Collection Technical Coordinator</i>	587-1587
Ronald Randall, <i>Acting Field Audit Branch Chief</i>	587-1700
Ronald Randall, <i>Oahu Office Audit Branch Chief</i>	587-1622
Gary Fukumura, <i>Oahu Collection Branch Chief</i>	587-1603
Stanley Ching, <i>Maui District Tax Manager</i>	984-8513
Ronald Yabe, <i>Hawaii District Tax Manager</i>	974-6396
Ernest Balderas, <i>Kauai District Tax Manager</i>	274-3458

Tax Services & Processing Division

Marie Okamura, <i>Taxation Services Administrator</i>	587-1460
June Yamamoto, <i>Taxpayer Services Branch Chief</i>	587-3267
Jerry Ebesu, <i>Documents Processing Branch Chief</i>	587-1453
Deanne Obatake, <i>Revenue Accounting Branch Chief</i>	587-1456

*The area code for all telephone numbers is 808.

LIST OF HAWAII FORMS AVAILABLE BY FAX

Forms Request Line: 808-587-7572 or Toll-Free (Forms By Mail Only): 1-800-222-7572
Forms By Fax For Callers Outside Oahu (Neighbor Islands, Mainland U.S., etc.): 808-678-0522

<u>Form Number</u>	<u>Form Title</u>	<u>Document Number</u>	<u>Form Number</u>	<u>Form Title</u>	<u>Document Number</u>
N-1	Declaration of Estimated Income Tax for Individuals	101	N-188X	Amended Individual Income Tax Return	131
N-3	Declaration of Estimated Income Tax for Corporations & S Corporations	102	N-188X Instr.	Instructions for Filing Form N-188X	132
N-11	Individual Income Tax Return (Residents Also Filing Federal Return)	103	N-196	Annual Summary & Transmittal of Hawaii Annual Information Returns	133
N-12	Individual Income Tax Return (Resident & Part-Year Resident)	104	N-210	Underpayment of Estimated Tax by Individuals & Fiduciaries	134
N-13	Individual Income Tax Return (Resident Short Form)	105	N-210 Inst.	Instructions for Filing Form N-210	135
Sch. X	Tax Credits for Hawaii Residents	106	N-220	Underpayment of Estimated Tax by Corporations & S Corporations	136
N-15	Individual Income Tax Return (Nonresident)	107	N-220 Inst.	Instructions for Filing Form N-220	137
Schs. A & B (N-15)	Itemized Deductions & Interest and Dividend Income	108	N-301	Application for Automatic Extension of Time to File Hawaii Corporation Income Tax Return	138
Sch. D (N-15)	Capital Gains & Losses	109	N-309	Corporation Application for Tentative Refund from Carryback of Net Operating Loss	139
N-20	Partnership Tax Return	110	N-848	Power of Attorney & Declaration of Representative	140
Sch. K-1 (N-20)	Partner's Share of Income, etc.	111	N-858	Physician's or Optometrist's Certified Report on Eye or Hearing Examination or Disability for Tax Exemption Purposes	141
N-30	Corporation Income Tax Return	112	G-17	Resale Certificate General Form 1	142
Sch. D (N-30)	Capital Gains & Losses	113	G-26	Use Tax Return	143
Sch. O (N-30)	Allocation & Apportionment of Income	114	G-45	General Excise/Use Tax Return	144
Sch. P (N-30)	Apportionment Formula	115	G-49	Annual Return and Reconciliation	145
Sch. O & P Inst. (N-30)	Instructions for Filing Schedules O & P	116	G-54	Amended Periodic General Excise/Use Tax Return	146
N-30X	Amended Corporation Income Tax Return	117	G-55	Amended Annual Return & Reconciliation General Excise/Use Tax	147
N-35	S Corporation Income Tax Return	118	G-54/G-55 Inst.	Instructions for Amended General Excise/Use Tax Returns	148
Sch. K-1 (N-35)	Shareholder's Share of Income, etc.	119	GEW-TA-RV-1	Notification of Cancellation of General Excise, Withholding, Transient Accommodations, & Rental Motor Vehicle and Tour Vehicle Identification Number	149
N-40	Fiduciary Income Tax Return	120	GEW-TA-RV-2	Change of Address	150
Sch. K-1 (N-40)	Beneficiary's Share of Income, etc.	121	GEW-TA-RV-3	Application for General Excise, Use Employer's Withholding, Transient Accommodations, & Rental Motor Vehicle and Tour Vehicle Identification Number	151
N-100	Application for Automatic Extension of Time to File Hawaii Return for a Partnership, Trust or REMIC	122	GEW-TA-RV-3 Instr.	Instructions for Filing Form GEW-TA-RV-3	152
N-100A	Application for Additional Extension of Time to File Hawaii Return for a Partnership, Trust or REMIC	123	TA-1	Transient Accommodations Tax	153
N-101A	Application for Automatic Extension of Time to File Hawaii Individual Income Tax Return	124	TA-2	Transient Accommodations Tax Annual Return & Reconciliation	154
N-101B	Application for Additional Extension of Time to File Hawaii Individual Income Tax Return	125	HW-3	Employer's Return & Reconciliation of Hawaii income Tax Withheld From Wages	155
N-103	Sale of Your Home	126	HW-4	Employer's Withholding Exemption & Status Certificate	156
N-109	Application for Tentative Refund from Carryback of Net Operating Loss (Other Than Corporation)	127	HW-14	Withholding Tax Return	157
N-139	Moving Expenses	128	A-7	Request for a Ruling	158
N-157	Credit for Energy Conservation	129			
N-172	Claim for Tax Exemption by Person with Impaired Sight or Hearing or by Totally Disabled Person	130			

American Express

(From Page 3)

Hawaii imposes a tax on tangible personal property which is imported for use in the state. Use is defined to mean "any use," including the exercise of any right or power over tangible personal property incident to ownership of that property. The Taxpayer argued that its importation of promotional materials and merchandise catalogs from unlicensed sellers for distribution by direct delivery to customers and potential customers in Hawaii did not fall within the meaning of the statute because it did not exercise control over the items within the State. The Department, relying on, among other things, *In re Habilitat, Inc.*, 65 Haw. 199, 649 P.2d 1126 (1982), argued that the use tax applied because it was intended to seal a loophole that would exist if taxpayers went out-of-state to purchase items that were brought into the state for use, avoiding the local excise tax and discriminating unfairly against local businesses subject to that tax. In addition, the overriding concern is the broad based economic utilization of advertising materials, in which the Taxpayer garners additional customers and business from the distribution of promotional materials.

Recently Issued Tax Publications

All publications issued by the Department of Taxation from January 1996 through March 1997 have been included in this list. Future issues of this newsletter, however, will list only the most recently issued publications. Copies of these publications may be obtained from any district tax office, by calling the Forms Request Line on Oahu, or via the Internet. Addresses and telephone numbers are provided on the last page of this newsletter.

Sections 18-235-38-06 and 18-235-38-06.03, HAR - Relating to the allocation and apportionment of income of construction contractors under the uniform division of income for tax purposes act, effective March 11, 1996.

Sections 18-231-3.4-01 and 18-231-25.5-01 through 18-231-25.5-05, HAR - Relating to cost recovery fees for selected goods and services provided by the Department of Taxation.

TIR No. 96-1 - Clarifies that Hawaii will follow Nexus Program Bulletin No. 95-1 issued by the Multistate

Tax Commission with respect to its enforcement and application of the general excise tax, use tax, and income tax. The Bulletin concluded that a computer company's provision of in-state repair services creates nexus.

TIR No. 96-2 - Advises taxpayers that the "original package doctrine" does not apply to the general excise and use taxes.

TIR No. 96-3 - Advises taxpayers that, effective July 1, 1996, the Hawaii fuel tax shall not apply to the sale of bonded aviation/jet fuel to air carriers departing for foreign ports or arriving from foreign ports on stopovers before continuing on to their final destinations.

TIR No. 96-4 - Clarifies the application of the general excise tax with respect to the sale of pesticide to a pest control operator for use in treating the building or structure of a customer.

TIR No. 96-5 - Addresses the taxation of pensions under the Hawaii Net Income Tax Law.

TIR No. 96-6 - Sets forth the Department's position with respect to the operation of section 231-33, HRS (Tax debt due the State; lien) and explains the use of Form D-37 (Notice of Mortgage, Pledge or Purchase)

TIR No. 97-1 - Provides taxpayers with further guidance in determining their residency status.

Announcement, dated January 22, 1996 - Announces the adoption of Hawaii Administrative Rules, relating to the administration of taxes, chapter 231, HRS, and to taxation of banks and other financial corporations, chapter 241, HRS.

Announcement, dated February 28, 1996 - Explains the administrative extension of time granted to taxpayers serving in Bosnia in "Operation Joint Endeavor" on or after March 15, 1996.

Announcement, dated March 22, 1996 - Provides a list of candidates for political office who have registered with the campaign spending commission.

Announcement, dated April 4, 1996 - Provides a listing of new and obsolete/retired tax forms, instructions, and schedules; and errors found on Hawaii tax forms as of April 4, 1996.

Announcement, dated April 19, 1996 - Announces the adoption of Hawaii Administrative Rules, relating to the allocation and apportionment of income of construction contractors under the uniform division of income for tax purposes act.

Announcement, dated April 26, 1996 - Informs taxpayers of the increase in liquor tax rates.

Announcement, dated May 29, 1996 - Explains the procedures to follow if a letter assessing penalty for underpayment of estimated income tax was sent to a
(See Recent Publications, Page 7)

Recent Publications

(From Page 6)

taxpayer by mistake.

Announcement, dated July 8, 1996 - Announces that the maximum rate of withholding of taxes from wages was decreased from 10 percent to 8 percent.

Announcement, dated December 5, 1996 - Explains the income tax relief available to persons who have suffered losses or damages to their property resulting from the recent storms and flooding.

Announcement No. 97-1 - Provides a list of candidates for political office who have registered with the campaign spending commission.

Announcement No. 97-2 - Adopts the Internal Revenue Service optional standard mileage rates.

Announcement No. 97-3 - Provides a listing of new tax forms, instructions, and schedules; and errors found on Hawaii tax forms as of February 26, 1997.

Announcement No. 97-4 - Announces the adoption of Hawaii Administrative Rules, relating to cost recovery fees for selected goods and services provided by the Department of Taxation.

Tax Facts No. 96-1 - Provides general information on the general excise tax (and pass-on policy).

Tax Facts No. 96-2 - Provides general information on the transient accommodations tax.

Tax Facts No. 96-3 - Provides information on Act 314, SLH 1996, which requires all businesses to obtain a tax clearance certificate from the State Department of Taxation and the Internal Revenue Service in order to enter into a State or county contract for the furnishing of goods or professional services.

Tax Facts No. 97-1 - Provides general information on the application of the general excise and use taxes for contractors.

Pending Tax Publications

The following is a list of tax publications in progress, and the name and telephone number of the staff member assigned to the publication. We will coordinate with the Director's Advisory Group in opening new rules and TIR projects.

Hawaii Administrative Rules - Relating to bulk sales. (Jayna Uyehara, 587-1553)

Hawaii Administrative Rules - Amending section 18-235-7-03, HAR, relating to partners. (Fay Morinaga-Pang, 587-1564)

Hawaii Administrative Rules - Relating to the enterprise zones. (Grant Tanimoto, 587-1569)

Hawaii Administrative Rules - Relating to intermediary services. (Grant Tanimoto, 587-1569)

Hawaii Administrative Rules - Relating to the reimbursement exemption. (Grant Tanimoto, 587-1569)

Hawaii Administrative Rules - Relating to penalty and interest imposition and waiver standards. (Jayna Uyehara, 587-1553)

TIR - Reminding taxpayers of the requirement to file unitary tax returns for taxable years beginning January 1, 1995. (Johnson Lau, 587-1562)

TIR - Application of the general excise tax and use tax to companies leasing personal property. (Johnson Lau, 587-1562)

TIR - Application of the income tax and general excise tax to qualified savings funds authorized under IRC section 468B. (Marshall Dimond, 587-1533)

TIR - IRA rollover. (Fay Morinaga-Pang, 587-1564)

TIR - Application of the general excise tax to satellite broadcasters. (Jayna Uyehara, 587-1553)

TIR - Application of the general excise tax to Internet service providers. (Jayna Uyehara, 587-1553)

TIR - Announcing the intent to conform to the IRS's final regulations on entity classification for income tax purposes, with caveat on the general excise tax. (Jim Watts, 587-1786)

Announcement - Listing of TIRs in effect, obsolete; listing of all rules. (Fay Morinaga-Pang, 587-1564)

COMING NEXT ISSUE

- Procedures for public access to internal Department manuals.
- Fees charged by the Department for various services.
- Questions from readers answered.