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September 4, 1990

The Honorable Richard F. Kahle, Jr.
Director of Taxation
State of Hawaii
830 Punchbowl Street, Room 221
Honolulu, Hawaii

Dear Mr. Kahle:

Re: Transient Accommodations Tax Liability
for Hotel Room Rentals to Airlines

By memorandum dated June 28, 1990, you requested our opinion on whether the rental of hotel rooms to airlines under leases with a term of 180 days or more (for use of crew members on Hawaii stop-overs) is subject to transient accommodations tax. It is our opinion that the rental is not taxable.

Section 237D-2(a), Hawaii Revised Statutes, imposes a tax "on the gross rental or gross rental proceeds derived from furnishing transient accommodations." The statute also provides that no tax is to be levied unless the transient accommodations are furnished for a transient purpose. Haw. Rev. Stat. § 237D-15(b) (Supp. 1989). See also Haw. Admin. R. § 18-237D-1-05 (1988).

A hotel room is clearly a "transient accommodation" because it is defined by section 237D-1, Hawaii Revised Statutes, to be the furnishing of:

[A] room, apartment, suite, or the like which is customarily occupied by a transient for less than one-hundred eighty consecutive days for each letting by a hotel, apartment hotel, motel, condominium property regime or apartment as defined in chapter 514A, cooperative apartment, or

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rooming house that provides living quarters, sleeping, or housekeeping accommodations, or other place in which lodgings are regularly furnished to transients for consideration.

However, the furnishing of hotel rooms to airlines under long-term contracts does not appear to be for a transient purpose.

Although "transient" is no longer defined in the statute, section 18-237D-1-04(a) of the Hawaii Administrative Rules defines "transient" as "any person who stays for only a short and temporary period, such as a person who comes and goes with only a brief stop. A transient includes both residents and nonresidents." Under that definition, the airlines are not transients because they do not stay for only a short and temporary period or come and go with only a brief stop, but rather, occupy the rooms for extended periods as an integral part of conducting business operations in Hawaii.

Further, the Hawaii Administrative Rules recognize that a company renting hotel rooms under a long-term contract in order to carry out business operations is not subject to the transient accommodations tax. The rules provide that renting a hotel room for 180 days or longer to a construction company to temporarily house employees on a job site is not subject to tax. See Haw. Admin. R. § 18-237D-1-05(c)(1)(C) (1988). We see no difference between the above example and the case of the airlines. In both, a business is renting hotel rooms for a

¹ The definition of transient as "a person who does not have the intention of making such accommodation a permanent place of domicile" was deleted from the statute in 1988. Act No. 241, 1988 Haw. Sess. Laws 423, 425, § 2 ¶ 4.

The legislative history gives no specific reason for the deletion. The statute was amended after discussion with members of the visitor industry and others to "clarify the administration of the tax and the treatment of the exemptions previously enacted." H.R. Rep. No. 1113, 1988 House Journal 1235.

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business purpose which requires the business to occupy the rooms for more than a short and temporary period.

For the reasons set forth above, we conclude that the rental of hotel rooms to airlines under leases with a term of 180 days or more (for use of crew members on Hawaii stop-overs) is not subject to transient accommodations tax. We express no opinion on the tax consequences of the airlines, as lessee, furnishing hotel rooms to employees or others for consideration.

Very truly yours,



Cynthia Unwin
Deputy Attorney General

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APPROVED:



Warren Price, III
Attorney General