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IN THE TAX APPEAL COURT OF THE STATE OF HAWAII

In the Matter of the Tax Appeal) CASE NO. 1876) of) STIPULATED JUDGMENT) MABEL J. VAN VALKENBURG

STIPULATED JUDGMENT

WHEREAS, the Director of Taxation has assessed additional income taxes, including interest, in the total amount of \$19,438.78 to the Taxpayer for the tax years 1975, 1976 and 1977; and

WHEREAS, the additional income taxes were mistakenly assessed against interest income which the Director believed to be derived from an Agreement of Sale executed in Hawaii, but which, in fact, has been derived from a purchase money mortgage indebtedness; and

WHEREAS, pursuant to said purchase money mortgage indebtedness all payments required thereunder are mailed directly by the purchaser to the Taxpayer at her home in California with no agency or collection account having been established or maintained in Hawaii for the collection and servicing thereof; and

WHEREAS, the parties hereto agree the immediate source of the interest income was the debt underlying the mortgage, which debt constitutes intangible personal property that has a taxable situs at the place of the owner's domicile

[Tax Regulation No. 58-10 as superseded by Tax Regulation 79-2(N)); and

WHEREAS, in <u>Carter v. Hill</u>, 31 Haw. 264 (1930), affirmed by <u>Hill v. Carter</u>, 47 F2d 869 (1931), our Court has determined that as an intangible, the debt has an actual situs in California rather than Hawaii, as a result whereof the interest income received by the Taxpayer in this case does not constitute income received or derived from a source within the State; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- 1. The interest income herein involved derives from a purchase money mortgage indebtedness.
- 2. As an intangible personal property, the said indebtedness has a taxable situs at the place of the owner's domicile in the State of California and the said interest income, therefore, does not constitute income received or derived from sources within the State.
- 3. The Taxpayer shall be refunded the excess taxes paid together with the return of costs and interest as provided in Hawaii Revised Statutes, Sections 232-23 and 232-24.

DATED: Honolulu, Hawaii,

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Judge of the above-entitled Court

APPROVED AS TO FORM:

C. MICHAEL HARE RICHARD L. GRIFFITH 1000 Bishop Street

Honolulu, Hawaii 96813

Attorneys for MABEL J. VAN VALKENBURG, Appellant