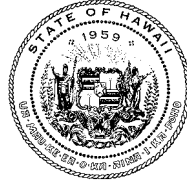


LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1510
FAX NO: (808) 587-1540

STANLEY SHIRAKI
ACTING DIRECTOR OF TAXATION

RONALD B. RANDALL
ACTING DEPUTY DIRECTOR

LETTER RULING NO. 2010-16

[REDACTED TEXT]
[REDACTED TEXT]
[REDACTED TEXT]
[REDACTED TEXT]

August 3, 2010

RE: APPLICATION OF ACT 155, SLH 2010, TO [REDACTED TEXT]

Dear [REDACTED TEXT]:

This letter responds to your July 1, 2010, correspondence asking for the Department of Taxation's (Department) guidance on whether Act 155, Session Laws of Hawaii 2010 (hereinafter "Act 155") is applicable to [REDACTED TEXT] (hereinafter "Organization").

QUESTION PRESENTED

Whether Act 155 is applicable to the Organization, which is an instrumentality of the United States government.

BRIEF ANSWER

As an instrumentality of the United States government, which has not had its tax-immune character waived by Congress, Act 155 does not apply to the Organization.

FACTS & ANALYSIS

The Organization was chartered by the United States Congress and is a federal instrumentality that has not consented to state taxation.

[REDACTED TEXT]

Act 155, SLH 2010, was passed by the 2010 Legislature to provide additional protections for Hawaii's general excise tax. As stated by the Legislature: "To restore efficiency in Hawaii's general excise tax, without increasing the tax rate, repealing exemptions, or placing additional burdens on businesses other than what is fair and reasonable, this Act strengthens the general excise tax by requiring all businesses that enjoy excise tax exemptions to register to do business in Hawaii, timely file their tax returns, as well as expressly claim their entitlement." Act 155, SLH 2010, § 1. There are two primary components to Act 155: (1) an administrative component, which requires all persons with "gross receipts" to obtain a general excise tax license and file general excise tax annual

LETTER RULING NO. 2010-16

[REDACTED TEXT]

[REDACTED TEXT]

August 3, 2010

Page 2 of 2

returns, or risk losing any “general excise tax benefit;” and (2) personal trust fund liability of certain key individuals for unpaid general excise taxes in certain situations.

Act 155, as drafted, applies to all provisions of Chapter 237 “notwithstanding” any other law to the contrary, including provisions of the general excise tax law that would otherwise exempt amounts that the State would be constitutionally unable to tax. *See* HRS § 237-22. Despite the requirements of Act 155, Hawaii is unable to assert its taxing authority, including its regulatory authority, over federal instrumentalities; unless such immunity has been waived. *See e.g. McCullouch v. Maryland*, 4 Wheat 316 (1819). Because the Department cannot tax or exert its taxing authority over federal instrumentalities as discussed above, and further because the Organization is a tax-immune federal instrumentality, Act 155 does not apply to the Organization or any of its receipts.

This ruling is applicable only to the Organization, and shall not be applied retroactively. It may not be used or cited as precedent by any other taxpayer, and is based on our understanding of the facts that you have represented. If it is later determined that our understanding of these facts is not correct, the facts are incomplete, or the facts later change in any material respect, the conclusion in this letter will be modified accordingly. This ruling also may be subject to change due to future amendments to laws, rules, or official Department positions.

The Organization has reviewed and agreed that the redacted version of this ruling attached as Exhibit A will be available for public inspection and copying.

If you have any further questions regarding this matter, please call me at 808-587-1569. Additional information on Hawaii’s taxes is available at the Department’s website at www.state.hi.us/tax.

Very truly yours,

JOSEPH B. TICHY
Administrative Rules Specialist