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December 9, 2011

[redacted text]
[redacted text]
[redacted text]

Re: General Excise Tax Reimbursement Exemption

Dear [redacted text]:

This responds to your letter dated September 13, 2011, wherein you requested a letter ruling regarding application of the reimbursement exemption under Hawaii Revised Statutes (HRS) section 237-20 to your client, [redacted text].

Facts Represented by the Taxpayer

[redacted text] (Taxpayer) is a newly formed condominium association. The roof of the building is being rented out by the developer of the condominium project to television and cell phone companies to install their antennas. These rooftop tenants have rental agreements with the developer and not with Taxpayer. The building has one electricity meter and Taxpayer is responsible to the Hawaiian Electric Company (HECO) for the monthly electricity bills. The developer has agreed to reimburse Taxpayer for the electricity its rooftop tenants use.

The antennas are sub-metered and read monthly. Based on these readings and charges by HECO for that particular month, Taxpayer calculates the rooftop renters' shares of the electricity costs. Taxpayer adds no additional charges. Taxpayer then bills the developer for the electricity its rooftop renters used in the period.

Law and Analysis

HRS section 237-20 states:

> The reimbursement of costs or advances made for or on behalf of one person by another shall not constitute gross income of the latter, unless the person receiving such reimbursement also receives additional monetary consideration for making such costs or advances.

Section 18-237-20-02 of the Hawaii Administrative Rules (HAR) states that this reimbursement exemption applies when:

(1) Taxpayer pays a cost or advance to Third Party;
(2) For or on behalf of Reimbursing Party; and
(3) Taxpayer is repaid the cost or advance and receives no additional monetary consideration for making the cost or advance.

(internal citations omitted).

Taxpayer meets the requirements of paragraph (1). "Third Party" is defined under HAR § 18-237-20-03 as "the party to whom Taxpayer pays the cost or advance." In this case, the Third Party is HECO, and when Taxpayer pays its electric bill, a bill which includes charges for the electricity used by the developer's rooftop tenants, Taxpayer has paid a cost or advance to that Third Party.

Taxpayer also meets the requirements of paragraph (2). HAR § 18-237-20-06(a) states "payment of a cost or advance is 'for or on behalf of Reimbursing Party' when done at the request or direction of Reimbursing Party." Subsection (b) goes on to state that a cost or advance is done at the request or direction of Reimbursing Party if:

> The payment is made pursuant to a preexisting cost-splitting contract whereby Taxpayer pays Third Party for property or services provided to both Taxpayer and Reimbursing Party, and Taxpayer receives from Reimbursing Party a payment proportionate to Reimbursing Party's share of the cost of the property or services … [and] … Taxpayer does not use, consume or alter the services provided by Third Party.

In Taxpayer's case, the developer (Reimbursing Party) has requested that Taxpayer pay HECO (Third Party) for services provided to both Taxpayer and developer (electricity provided to both Taxpayer and the developer's rooftop tenants), and Taxpayer does not use, consume or alter the electricity provided to the developer's rooftop tenants. Therefore, Taxpayer's payments to HECO are made pursuant to a preexisting cost-splitting contract and thus are done at the request of a Reimbursing Party under HAR § 18-237-20-06 and HAR § 18-237-02(2).

The facts in this case are substantially similar to those of Example 28 under HAR § 18-237-20-06(e):

> [Taxpayer, a real estate broker, and its real estate agents (Reimbursing Parties), classified as independent contractors, enter into preexisting cost-splitting contracts relating to the cost of participating in the Multiple Listing Service's (Third Party) central property advertisement and other services]. The annual dues, MLS participation fee, and cost for MLS books are assessed to Taxpayer and each of the agents, but the invoices are sent to Taxpayer. Taxpayer and the agents enter into preexisting cost-splitting contracts that provide that Taxpayer will initially pay the MLS dues, fee, and cost for books for Taxpayer and the agent. The agent will repay Taxpayer the exact amount Taxpayer pays to the MLS that is

> attributable to agent without including [any additional amounts]. Conclusion: The payment to the MLS is made pursuant to a preexisting cost-splitting contract[.]

Taxpayer and the developer, similar to the Taxpayer and agents in Example 28, have entered into a preexisting cost-splitting contract relating to the cost of a service. Taxpayer initially pays the electric bill, and the developer, similar to the agents in Example 28, later repays Taxpayer the exact amount attributable to the developer's rooftop tenants.

Taxpayer also meets the requirements of paragraph (3). When the developer pays Taxpayer for its share of the electricity bill, the developer is repaying Taxpayer's cost or advance paid to HECO. Taxpayer has also represented that it receives no additional monetary consideration from the developer.

Taxpayer meets the requirements of all three paragraphs under HAR 18-237-20-02. Taxpayer pays a cost or advance (the electricity bill) to a third party (HECO), for or on behalf of a reimbursing party (the developer), and Taxpayer is repaid that cost or advance with no additional monetary consideration.

Conclusion

Based on the representations, the gross receipts Taxpayer receives from the developer in repayment for electricity consumed by the developer's rooftop tenants are reimbursements exempt under HRS § 237-20.

This ruling is applicable only to Taxpayer and shall not be applied retroactively. It may not be used or cited as precedent by any other taxpayer.

The conclusions reached in this letter are 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 conclusions in this letter will be modified accordingly.

Taxpayer has reviewed and agreed that a redacted version of this ruling will be available for public inspection.

If you have any further questions regarding this matter, please call me (808) 587-5334. Additional information on Hawaii's taxes is available at the Department's website at www.state.hi.us/tax.

Sincerely,

JACOB L. HERLITZ
Administrative Rules Specialist