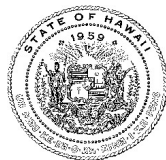


NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
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FREDERICK D. PABLO
INTERIM DIRECTOR

RANDY BALDEMORE
DEPUTY DIRECTOR

May 23, 2011

[Redacted Text]
[Redacted Text]
[Redacted Text]
[Redacted Text], HI [Redacted Text]

Re: Application of Section 251-2, HRS to [Redacted Text]

Dear [Redacted Text]:

This responds to the request of March 22, 2011 of [Redacted Text] (the "Company"), requesting a ruling from the State of Hawaii Department of Taxation (the "Department") regarding the application of § 251-2, Hawaii Revised Statutes ("HRS") to the Company.

SHORT ANSWER

Based on the information in your letter ruling request, the Company is not liable for the Hawaii Tour Vehicle Surcharge Tax imposed under §251-2, HRS as the vehicle is not used to carry eight or more passengers.

FACTS REPRESENTED

The Company provides [Redacted Text], utilizing [Redacted Text] vehicles which have a seating capacity of six. The vehicles utilized provide for seat belts for [Redacted Text] passengers maximum (plus the driver), although the Company's policy is to limit the number of passengers to [Redacted Text]. The vehicles are equipped with the [Redacted Text]. The Company does not alter the seating configuration between tours at any time, and complies with applicable state law which requires a seat belt for each individual passenger.

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

LAW AND ANALYSIS

Chapter 251, HRS imposes a rental motor vehicle and tour surcharge tax upon certain types of motor vehicles. In particular, HRS §251-2(b)(2), imposes a tour vehicle surcharge tax on tour vehicles having a capacity of eight passengers or more. It provides in pertinent part:

[Redacted Text]

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- (1) \$65 for each tour vehicle used or partially used during the month that falls into the over twenty-five passenger seat category; and
- (2) \$15 for each tour vehicle used or partially used during the month that falls into the eight to twenty-five passenger seat category.

The tour vehicle surcharge tax shall be levied upon the tour vehicle operator.

“Tour vehicle” is defined in HRS §251-1 as:

"Tour vehicle" means any vehicle, including vans, minibuses, and buses used for the purpose of transporting persons for pleasure or sightseeing trips, or transporting persons to pleasure or sightseeing cruises or destinations. The term does not include any vehicle used solely for the purposes of transporting individuals to and from a place of work or a public or private school or of transporting persons with disabilities.

In order for the tour vehicle surcharge tax to apply, the vehicle must have a capacity to carry eight or more passengers at least once in a month. For example, if the Company carries eight (8) passengers during some period of time in a calendar month, the tour vehicle surcharge tax applies even if the majority of the vehicle's use in the month is for carrying less than eight (8) passengers. In this case, the Company has represented that the vehicles are not used to carry more than **[Redacted Text]** passengers at any time and has a passenger capacity of six (6). As such, the tour vehicle surcharge tax is inapplicable to the Company.

CONCLUSION

It is clear that Chapter 251, HRS applies solely to vehicles having the capacity to carry eight or more passengers at some point in the month. As the Company has represented that the vehicles are not used to carry more than **[Redacted Text]** passengers at any time and can seat no more than six (6) passengers, the tour vehicle surcharge tax is inapplicable to the Company.

This ruling is applicable only to the Company, and shall not be applied retroactively. It may not be used or cited as precedent by any other taxpayer, and is limited to the facts as represented based upon our understanding of the facts. No representation is made as to any other transaction, regardless of the similarities of fact. 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.

[Redacted Text]

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If you have any further questions regarding this matter, please email me at mark.j.yee@hawaii.gov. Additional information on Hawaii's taxes is available at the Department's website at www.state.hi.us/tax.

Very truly yours,

s/ Mark J.C. Yee

MARK J.C. YEE

Administrative Rules Specialist