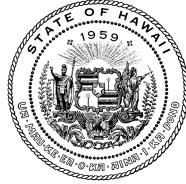


NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-5334
FAX NO: (808) 587-1584

FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

January 20, 2012

LETTER RULING NO. 2012-04

[redacted text]

Re: Tax Obligations for [redacted text]

Dear [redacted text]:

By letter dated May 5, 2011, and supplemented by letter dated August 11, 2011 you requested the State of Hawaii Department of Taxation (the "Department") rule on the Hawaii General Excise Tax (GET) and Transient Accommodations Tax (TAT) obligations of your client, [redacted text], a company engaged in the rental of accommodations in rehabilitated military barracks located on a secure military installation in Hawaii.

FACTS

Historically, the United States Department of Defense ("DOD") maintained facilities located on military installations around the world to house military personnel not permanently assigned to the respective Post. This was known as the Army Facilities Maintenance Program and at one point the DOD operated nearly 70,000 rooms as part of it.

Several year ago, Congress authorized the U.S. Army to privatize the operation of these facilities (the "Privatization Program"). The intended purpose of the Privatization Program is to obtain private sector financing to address the poor conditions of the facilities and the estimated high cost to repair them.

The DOD entered into an agreement with a leading public-private community real estate development company to acquire the ownership of facilities located at the military installations located throughout the United States and to make all necessary repairs and renovations. In turn, the real estate development company entered into a contractual arrangement with [redacted text] ("Taxpayer") to manage the facilities once they are renovated. Taxpayer and the real estate development company are unrelated entities.

The real estate development company is expected to maintain existing facilities and to renovate inadequate facilities. Taxpayer is expected to manage the facilities. The facilities are for the exclusive use of "official travelers." Official travelers are military personnel either on temporary duty, undergoing a change of station, or traveling on official military business. To stay at these facilities, guests must have on-post access.

Letter Ruling No. 2012-04

[redacted text]

January 20, 2012

Page 2 of 5

Taxpayer, as operator of the facilities, collects rental income from the official traveler guests in exchange for furnishing them rooms in the facilities.

GENERAL EXCISE TAX DISCUSSION

Taxpayer's gross rental income from furnishing rooms to the guests is subject to the general excise tax.

The furnishing of transient accommodations, such as rooms in the renovated military facilities Taxpayer operates, is a service business the gross receipts from which are subject to general excise tax under Hawaii Revised Statutes (HRS) section 237-13(6) or (9). There are no exemptions applicable to Taxpayer's situation. However, gross rental income does not include the tax on transient accommodations imposed by Chapter 237D and passed on to guests.¹

Therefore, Taxpayer owes general excise tax on the gross rental income it collects from the facilities' guests. The current rate is 4.5% on gross receipts from rooms furnished in the county of Oahu and 4.0% on gross receipts from rooms furnished anywhere else in the state.

Taxpayer must file both periodic returns and an annual return and reconciliation. The periodic return (Form G-45) must be filed throughout the year at specific intervals. The frequency with which Taxpayer must file depends on the amount of tax Taxpayer has to pay during the year. Form G-45 is due on or before the 20th day of the calendar period following the end of the filing period.

- Taxpayer must file Form G-45 monthly if Taxpayer will pay more than \$4,000 in general excise tax per year.
- Taxpayer may file Form G-45 quarterly if Taxpayer will pay \$4,000 or less in general excise tax per year.
- Taxpayer may file Form G-45 semiannually if Taxpayer will pay \$2,000 or less in general excise tax per year.

In addition to periodic returns, Taxpayer must also file an annual return and reconciliation (Form G-49) after the close of the taxable year. Form G-49 is due on or before the 20th day of the 4th month following the close of the taxable year.

For more information on filing general excise tax returns, please see the Department's *General Instructions for Filing the General Excise/Use Tax Returns*. Those instructions can be found at: <http://www6.hawaii.gov/tax/2010/g45ins.pdf>.

¹ See HRS § 237-24.3(8).

Letter Ruling No. 2012-04

[redacted text]

January 20, 2012

Page 3 of 5

TRANSIENT ACCOMMODATIONS TAX DISCUSSION

Taxpayer's gross rental income from furnishing rooms to the guests is generally subject to the Transient Accommodations Tax. However, a portion of Taxpayer's gross income may be exempt from TAT.

HRS section 237D-2 imposes the TAT on gross rental proceeds derived from furnishing transient accommodations. "Transient accommodations" is defined under HRS § 237D-1 as:

[T]he 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 or unit as defined in chapter 514B, cooperative apartment, or rooming house that provides living quarters, sleeping, or housekeeping accommodations, or other place in which lodgings are regularly furnished to transients for consideration.

The tax is to be paid by the operator under HRS 237D-2(c). "Operator" is defined under HRS § 237D-1 as:

[A]ny person operating a transient accommodation, whether as owner or proprietor or as lessee, sublessee, mortgagee in possession, licensee, or otherwise, or engaging or continuing in any service business which involves the actual furnishing of transient accommodation.

Taxpayer is the operator of the facilities and thus must pay the TAT on gross rental proceeds derived from furnishing transient accommodations to guests at the facilities unless there is an exemption.

HRS section 237D-3(4) exempts from TAT:

Living accommodations for persons in the military on permanent duty assignment to Hawaii, including the furnishing of transient accommodations to those military personnel who receive temporary lodging allowances while seeking accommodations in Hawaii or while awaiting reassignment to new duty stations outside the State.

This exemption applies to some, though not all, of the "official travelers" to whom Taxpayer furnishes rooms. Specifically, gross rental proceeds received from the official travelers who are undergoing a change of station and who have been given a temporary lodging allowance are exempt.² However, gross rental proceeds received from official travelers on temporary

² See also Hawaii Administrative Rules section 18-237D-3-01(a)(4).

Letter Ruling No. 2012-04

[redacted text]

January 20, 2012

Page 4 of 5

assignment or official military business are not exempt and remain subject to TAT.

The proof necessary for Taxpayer to establish that the gross rental income it received from a military person is exempt under HRS § 237D-3(4) is found in Hawaii Administrative Rules (HAR) section 18-237D-3-01(d)(1), which provides:

To qualify for an exemption under [HRS § 237D-3(4) and HAR § 18-237D-3-01(a)(4)] the operator shall require that the person in the military on permanent duty assignment present the following at the time of check-in:

- (A) An identification card with a serial number which verifies the person's military status; and
- (B) A copy of the orders prepared by the military organization verifying the period for which the temporary lodging allowance is received.

The operator shall maintain copies of documents supporting any claim for an exemption under this paragraph for three years.

To the extent Taxpayer furnishes rooms to military persons on permanent duty assignment to Hawaii who receive a temporary lodging allowance and collects and maintains the proof of this in accordance with HAR § 18-237D-3-01(d)(1), Taxpayer's gross rental income is exempt from TAT. Taxpayer's other rental income, even if from other official travelers, is subject to TAT.

Taxpayer must file both periodic returns and an annual return and reconciliation. The periodic return (TA-1) must be filed on a periodic basis depending on the amount of tax Taxpayer must pay during the year.

- Taxpayer must file Form TA-1 monthly if Taxpayer will pay more than \$4,000 in general excise tax per year.
- Taxpayer may file Form TA-1 quarterly if Taxpayer will pay \$4,000 or less in general excise tax per year.
- Taxpayer may file Form TA-1 semiannually if Taxpayer will pay \$2,000 or less in general excise tax per year.

In addition to periodic returns, Taxpayer must also file an annual return and reconciliation (Form TA-2) after the close of the taxable year. Form TA-2 is due on or before the 20th day of the 4th month following the close of the taxable year.

For more information on filing the periodic return, please see the Department's *How to Complete Your Periodic Transient Accommodations Tax Return* which can be found at: <http://www6.hawaii.gov/tax/2010/ta1ins.pdf>. For more information on filing the annual return and reconciliation, please see the Department's *How to Complete Your Transient*

Letter Ruling No. 2012-04

[redacted text]

January 20, 2012

Page 5 of 5

Accommodations Tax Annual Return and Reconciliation which can be found at:
<http://www6.hawaii.gov/tax/2010/ta2ins.pdf>.

The conclusion reached in this letter 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 Taxpayer has reviewed the redacted version of this ruling and agreed that it will be available for public inspection and copying.

If you have any further questions regarding this matter, please call me at 808-587-5334.

Sincerely,

JACOB L. HERLITZ
Administrative Rules Specialist