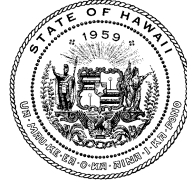


NEIL ABERCROMBIE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



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FREDERICK D. PABLO
DIRECTOR OF TAXATION

JOSHUA WISCH
DEPUTY DIRECTOR

April 3, 2013

Letter Ruling No. 2013-02

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

Re: Grandfathering Provisions of Act 105, Session Laws of Hawaii 2011, as Applied to
[Redacted Text]

Dear [Redacted Text]:

This responds to your letter of January 11, 2013, as supplemented by your letter of March 8, 2013 and your email of April 2, 2013, on behalf of [Redacted Text] (Company), requesting that the State of Hawaii Department of Taxation (Department) determine whether or not the grandfathering provisions of Act 105, Session Laws of Hawaii 2011 (Act 105) are applicable to the [Redacted Text] (Contract), such that the [Redacted Text] is exempt from the general excise under section 237-25([Redacted Text], Hawaii Revised Statutes (HRS) as it existed prior to the passage of Act 105.

SHORT ANSWER

Based on the information in your letter request and the supplement thereto, the [Redacted Text] is exempt from the general excise under section HRS § 237-25[Redacted Text] due to the grandfathering provisions of Act 105.

REPRESENTED FACTS

The Company is [Redacted Text] to a variety of customers. The Company's address is [Redacted Text], with federal employer identification number [Redacted Text] and its Hawaii General Excise (GE) tax number is [Redacted Text]. The Company is an accrual basis taxpayer and has a calendar year accounting period.

The [Redacted Text] and [Redacted Text]. Pursuant to a [Redacted Text] and prior to the passage of Act 105, the Company and [Redacted Text] entered into the Contract, which provides that the Company would [Redacted Text] in Hawaii. The Contract was entered into on or about [Redacted Text], with [Redacted Text].

Since the [Redacted Text], the amount paid by [Redacted Text] is based upon the [Redacted Text]. The Company represents that the GE tax is not embedded, included, or otherwise calculated into the [Redacted Text] price published [Redacted Text] and which becomes the base reference point in the pricing of the amount owed by [Redacted Text] to the Company for [Redacted Text] under the Contract.

The Contract is in writing and became binding prior to July 1, 2011. The contract [Redacted Text], which provides in pertinent part that:

[Redacted Text]

At the time the Company entered into the Contract, the Company was unaware of and could not have reasonably foreseen that Act 105 would suspend the exemption applicable to the Contract. The Company also requested a determination from the [Redacted Text] regarding the applicability of the grandfathering provision contained in Act 105 to the Contract, and the [Redacted Text] has ruled that the Contract falls within the grandfathering provision such that the [Redacted Text] is exempt from the general excise under section 237-25[Redacted Text], Hawaii Revised Statutes (HRS) as it existed prior to the passage of Act 105.

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

LAW AND ANALYSIS

Prior to the enactment of Act 105, the Company's fuel sales to [Redacted Text] under the Contract were exempt from the GE tax pursuant to HRS § 237-25[Redacted Text] which provides:

§237-25 Exemptions of sales and gross proceeds of sales to federal government, and credit unions. (a) Any provision of law to the contrary notwithstanding, there shall be exempted from, and excluded from the measures of, the tax imposed by chapter 237 all sales, and the gross proceeds of all sales, of:

[Redacted Text]

Act 105 temporarily suspended this exemption for two years beginning on July 1, 2011. However, Act 105 contains a grandfathering provision in section 2(f) which provides that the temporary suspension of the GE tax exemptions "shall not apply to gross income of gross proceeds from binding written contracts entered into prior to July 1, 2011, that do not permit the passing on of increased rates of taxes."

In this case, the Contract is a binding written instrument executed before the passage of Act 105. Because the GE tax is not included in the base price upon which the Contract price is

determined, the Contract does not permit the passing on of the increase in taxes due to Act 105. As such, under the grandfathering provisions of Act 105, the Company's [Redacted Text] under the Contract continues to be exempt from the GE tax pursuant to HRS § 237-25[Redacted Text] as it existed prior to the passage of Act 105.

CONCLUSION

The conclusions in this letter are based solely on the limited facts presented.

The Contract is a binding written instrument executed before the passage of Act 105. Because the GE tax is not included in the base price upon which the Contract price is determined, the Contract does not permit the passing on of the increase in taxes due to Act 105. As such, under the grandfathering provisions of Act 105, the Company's [Redacted Text] under the Contract continues to be exempt from the GE tax pursuant to HRS § 237-25[Redacted Text] as it existed prior to the passage of Act 105.

This ruling is applicable only to the represented facts and 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 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.

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 www.state.hi.us/tax.

Very truly yours,

Mark J.C. Yee
Administrative Rules Specialist