



DEPARTMENT OF TAXATION
STATE OF HAWAII

June 27, 1977

TAX INFORMATION RELEASE No. 52-77

RE: GUIDELINES RELATING TO SALES OF TANGIBLE PERSONAL PROPERTY
TO LICENSED LEASING COMPANIES; FORMS TO BE USED

For purposes of administering Section 237-4(8), Hawaii Revised Statutes, relating to sales of tangible personal property to licensed leasing companies, the following guides shall be followed by the Department of Taxation. These guidelines are furnished in conformance with the decision rendered by our Supreme Court in the case of In Re 711 Motors, Inc., 56 Haw. 644 (1976).

HRS Section 237-4(8) classifies sales to licensed leasing companies as wholesale sales and reads:

"Sales to licensed leasing company which leases capital goods as a service to others. As used in this paragraph capital goods are goods which have a depreciable life of more than three years."

1. Licensed leasing companies shall include those persons engaged in the leasing or renting of tangible property where the rental contract provides for the use of the property based upon time, or time plus mileage. These persons would include those engaged in the following business activities: leasing of automobiles; automobiles U-drives; leasing of equipment, furniture, appliances and tools.
 2. The term "depreciable life" is synonymous with the term "useful life" as the term is used for purposes of depreciation deduction under the income tax law. It shall mean the period over which the tangible property may reasonably be expected, at the time of sale, to be used in the purchaser's business. It is not the useful life inherent in the asset and it is not the period over which the taxpayer depreciates the asset on his books. Regulation 1.167(a)-1, Income Tax Regulations.
- In the 711 Motors case, automobile U-drive companies had depreciated the vehicles over a period of 48 months on their books. The automobiles, however, were used in the businesses for an average period of 17 months and thereafter were sold. The "depreciable" or "useful" life of these automobiles was determined to be 17 months.

3. In computing the depreciable life of an asset, the period shall be computed from the date the asset was first placed in service or used in the business, whether or not the asset was put in actual use only intermittently.

Example. Where an equipment leasing company purchases a crane for leasing purposes and the crane is actually leased for one month and thereafter sits in the company's yard for the remaining 11 months of the year but remains available for leasing should a customer wish to lease it. If the crane remains available for lease for a period exceeding 36 months, the crane will be attributed a depreciable life of more than three years and the sale of the crane will be classified as a wholesale sale.

4. Where the purchaser of tangible personal property elects to depreciate the asset based upon the Class Life Asset Depreciation System (ADR), the following shall apply:

- a. The election must have been on or after January 1, 1975, for purposes of Chapter 235, Hawaii Revised Statutes, the Hawaii Income Tax Law.
- b. The tangible property must have been purchased and used in the business on or after January 1, 1975.
- c. Useful life shall be governed by the class life or asset depreciation range which the purchaser has elected for purposes of the income tax law.
- d. The useful life attributed to the tangible property shall be conclusive upon the Department in the determination whether or not the asset has a depreciable life of more than three years.
- e. A failure on the part of the purchaser in any subsequent year to exercise his option to elect the asset depreciation range and class life system shall not affect the useful life of any asset which was included in an election made during a previous year. The useful life attributed to the asset in the year of election shall, for all purposes, determine whether or not the asset had a depreciable life of more than three years.

Example. During the year 1975, ABC U-Drive purchased a fleet of automobiles in its U-drive business and elected to depreciate the vehicles under the ADR System. The class life attributed to the vehicles is 48 months. ABC fails to elect ADR for the year 1976. The failure to exercise the election shall have no effect upon the automobiles purchased during 1975. There will be additional taxes assessed to the seller of the 1975 automobiles. The depreciable life of all automobiles purchased during 1976, however, will be determined by the rule prescribed in the 711 Motors case.

- f. The seller of tangible property may take from the purchaser a certificate in the form prescribed by the director of taxation certifying that the purchaser has elected the Class Life Asset Depreciation Range System (ADR). (See Form G-51 ADR)

The furnishing of such a certificate by the purchaser shall give rise to the presumption that the purchaser shall elect to depreciate the asset under the Class Life System. Any purchaser who shall furnish such a certificate shall be obligated to pay to the seller, upon demand, if the purchaser has not elected the ADR and the useful life of the asset is

determined not to be more than three years, the amount of the additional tax which by reason thereof is imposed upon the seller.

The absence of such a certificate shall, in itself, give rise to the presumption that the purchaser has not elected to depreciate the tangible property by the Class Life System.

- g. Where, after purchasing tangible property from the seller and having paid general excise taxes at the 4% rate, the purchaser elects ADR at the close of the tax year and a refund of 3-1/2% is made by the seller, the seller may claim a refund or credit in an amount equal to the amount of taxes paid by the seller upon such sale. Each seller who claims the refund or credit shall file an application in such form as shall be prescribed by the director of taxation and he shall attach to such application such certificate, paper, records and other information as the director may prescribe. (See Form G-52 ADR)

5. Because of its complementary nature, use taxes shall be assessed according to the guidelines set forth above. Where the sale of tangible property to a purchaser is deemed a wholesale sale for purposes of HRS Section 237-4(8), and is assessed general excise taxes at the one-half of one percent rate, use taxes shall correspondingly be assessed at the one-half percent rate for purposes of Chapter 238.

Example. Where a leasing company purchases automobiles from an out-of-state seller and thereafter imports the vehicles and uses the vehicles in its leasing business and the automobiles are actually used by the leasing company for more than three years, use taxes shall be assessed at the one-half of one percent rate.

Where the leasing company has elected to depreciate the automobiles by the ADR System and the Director of Taxation has approved the asset guideline life under the election, use taxes shall be assessed at the one-half percent rate where the automobile is given asset guideline period of more than three years.

STATE OF HAWAII-DEPARTMENT OF TAXATION
CERTIFICATE OF CLASS LIFE ASSET DEPRECIATION SYSTEM

(For use where the Purchaser certifies to the Seller that he has elected to use the Class Life Asset Depreciation Range System (ADR) on all tangible personal property purchased from the Seller.)

To _____
(Name of Seller)

(Address of Seller)

(Seller's I.D. No.)

(Date of Certificate)

The undersigned hereby certifies:

That the Purchaser is the holder of Hawaii Identification No. _____ under the Hawaii General Excise Tax Law, Hawaii Revised Statutes, Chapter 237;

That the Purchaser is engaged in business as a licensed leasing company pursuant to section 237-4(8) of the General Excise Tax Law and that he has elected to depreciate the assets used in his business based upon the Class Life Asset Depreciation System (ADR) for purposes of the income tax law during the immediately preceding tax year;

That this Certificate shall apply to the sale of capital goods which the Purchaser shall purchase from the above-named Seller for use in the Purchaser's leasing business;

That all of the tangible personal property to which this Certificate applies will be used by the Purchaser for leasing to others for a consideration, as set forth in section 237-4(8) of the General Excise Tax Law and paragraph (h) of Article 3 of the Regulations of the Director of Taxation Relating to Resale Certificates and Sales at Wholesale;

That the furnishing of this Certificate by the Purchaser shall give rise to the presumption that the Purchaser shall elect to depreciate the tangible personal property purchased from the Seller under the Class Life System with a useful life in excess of three years; and shall obligate the Purchaser to pay to the Seller, upon demand, if the Purchaser has not elected the ADR and the useful life of the tangible personal property is determined not to be more than three years, the amount of the additional tax which by reason thereof is imposed upon the Seller.

(Name of Purchaser)

(Address of Purchaser)

(Type of organization, e.g. corporation, partnership, sole proprietorship)

(Signature of Person signing this Certificate for the Purchaser, and title, or source of authority)

STATE OF HAWAII — DEPARTMENT OF TAXATION

CLAIM FOR REFUND OR CREDIT OF GENERAL EXCISE OR USE TAXES

(Based on Purchaser's election to use Class Life Asset Depreciation Range System (ADR))

Refund or credit is hereby claimed from general excise or use taxes resulting from the sale of capital goods to licensed leasing companies during the tax year 19 _____. The claim arises from the sale of capital goods to licensed leasing companies who have elected to depreciate their assets based upon the Class Life Asset Depreciation Range System (ADR) but who, at the time of sale, had failed to furnish a Certificate of Class Life Asset Depreciation System.

The total amount of the claim is—\$_____

Please (check one): refund this amount or
 credit the amount to taxes that may be due and owing by me.

Attached hereto is a copy of Form 4832 (revised) of the Internal Revenue Service; Form G-51 ADR of the Department of Taxation, State of Hawaii, evidencing the election made by the Purchaser to elect the ADR. It is understood, however, that the Director of Taxation may require such additional and further certificate, paper, records and other information as he deems necessary.

I certify that the claim for refund or credit of taxes herein made is based upon sales of tangible personal property to licensed leasing companies from whom general excise taxes were collected at the 4% rate at the time of sale, that all statements in this claim are true and correct to the best of my knowledge. I understand that any misstatement of facts will be grounds for disqualification and penalty.

Dated: _____, 19_____.

(Seller's Signature)

(Seller's Address)

(Seller's I.D. No.)

MAILING ADDRESSES

OAHU DISTRICT OFFICE
P. O. BOX 259
HONOLULU, HAWAII 96809

MAUI DISTRICT OFFICE
P. O. BOX 1169
WAILUKU, HAWAII 96793

HAWAII DISTRICT OFFICE
P. O. BOX 1377
HILO, HAWAII 96720

KAUAI DISTRICT OFFICE
P. O. BOX 1751
LIHUE HAWAII 96766