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TAX INFORMATION RELEASE NO. 2004-01

RE: Act 113, Session Laws of Hawaii 2004, Relating to Income Tax Withholding

On June 10, 2004, the Governor signed H.B. No. 2511, S.D. 1, C.D. 1, into law as Act 113. Act 113 amended Hawaii's Income Tax Law to conform the state withholding tax remittance due date for employers with an annual state withholding tax liability that exceeds \$40,000, to the semi-weekly remittance due date required under federal employment tax provisions. Section 231-9.9, Hawaii Revised Statutes (HRS), was also amended to require the use of electronic funds transfers (EFT) for semiweekly depositors. The Act became effective upon approval and applies to payroll periods beginning on or after December 31, 2004.

Determination of Tax Remittance Frequency

Act 113 does not change the remittance frequency for employers whose annual state withholding tax liability is:

- Quarterly: less than \$5,000 per year, who may continue to remit and file quarterly; or
- Monthly: \$40,000 or less per year, who may continue to remit and file by the 15th day of the following calendar month.

If an employer's annual state withholding tax liability exceeds \$40,000, the new semiweekly payment dates shall apply as follows:

- Wednesday: if taxes are withheld from wages paid the immediately preceding Wednesday, Thursday, or Friday; or
- Friday: if taxes are withheld from wages paid the immediately preceding Saturday, Sunday, Monday, or Tuesday.

The Department of Taxation (Department) will require employers who had withholding tax liabilities in excess of \$40,000 in the 2004 tax year to remit taxes on a semiweekly basis for the 2005 tax year. The Department will not be conforming to the federal four quarter lookback period under Treas. Reg. § 31.6302-1(b)(4), which determines the status of an employer as a

semiweekly depositor by aggregating the amounts of taxes reported on the employer's prior four quarterly returns.

Administrative Exemption from Required Electronic Filing

With respect to the required payment by EFT, the Department is committed to ensuring close conformity with the federal tax law and to limit the burden on taxpayers in complying with Act 113. Thus, the Department will not require an employer whose withholding liability exceeds \$40,000 (and is, therefore, subject to the new remittance requirements under Act 113) to pay by EFT if such employer is not required to also remit their federal employment taxes electronically via the Electronic Federal Tax Payment System (EFTPS).

Payments that are not made by EFT must be attached to a completed Form VP-1 Tax Payment Voucher.

To avoid penalties that may apply to the failure to file by EFT, employers must provide the Department with some evidence to indicate that they do not pay their federal employment taxes by the EFTPS (thus showing that they are not required by the Internal Revenue Service to pay by EFTPS). Evidence that will be accepted by the Department as sufficient proof of payment by other than electronic means shall include a copy of a cancelled check for payment of federal employment taxes within the calendar year for which the exemption is being asserted.

Please note that under § 231-9.9, HRS, and the accompanying administrative rules, taxpayers whose liability for any tax type is more than \$100,000 in any one taxable year shall be required to participate in the EFT program upon notification by the department that the taxpayer is required to participate. A taxpayer who is required to participate shall participate for a minimum of one year. Electronic payment shall be required to any taxpayer meeting the \$100,000 threshold, notwithstanding the administrative exemption from EFT requirements in Act 113 described in this Tax Information Release.

Adoption of the Federal Three-Day Banking Rule

To further conform with the federal remittance dates to ease compliance for taxpayers, the Department will adhere to the "Three-Day Banking Rule", which allows semiweekly depositors three banking days to make the deposit. See Example (2)(ii) of § 31.6302-1(d), Treas. Reg. In general, if a deposit is required to be made on a day that is not a banking day, the deposit is deemed timely if it is made by the close of the next banking day. Saturdays and Sundays along with federal and state bank holidays are treated as nonbanking days.

As applied specifically to semiweekly depositors, if any of the three weekdays after the end of a semiweekly period is a banking holiday, the employer will have one additional banking day to make the deposit. For example, if a semiweekly depositor accumulates taxes for payments made on Friday and the following Monday is not a banking day, the deposit that is normally due on Wednesday may be made on Thursday (to allow a total of three banking days to make the deposit).

Filing Requirements

Periodic withholding tax returns (Form HW-14) will continue to be filed monthly or quarterly, as applicable. All periodic withholding returns will be due on the 15th day of the month following the close of the tax period, including returns filed by employers withholding more than \$100,000 in Hawaii income tax per year.

On a quarterly basis, Federal Form 941, Schedule B, reflecting Hawaii income tax withheld from employees' wages, must be completed by semiweekly depositors and attached to the Form HW-14 submitted for the last month of the quarter. An employer filing monthly withholding tax returns, for example, will attach a completed Form 941, Schedule B, to returns filed for months of March, June, September, and December.

Current forms and other tax information are available at the Department's website at: www.state.hi.us/tax. If you know which tax form or publication you need, please call the Department's request line at 808-587-7572, or toll-free from the neighbor islands and continental U.S. at 1-800-222-7572. This service is available 24 hours a day, 7 days a week.

A handwritten signature in black ink, appearing to read "Kurt Kawafuchi". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping tail.

KURT KAWAFUCHI
Director of Taxation

HRS Sections Explained: HRS sections 231-9.9 and 235-62.