

**LINDA LINGLE**  
GOVERNOR

**JAMES R. AIONA, JR.**  
LT. GOVERNOR



**KURT KAWAFUCHI**  
DIRECTOR OF TAXATION

**SANDRA L. YAHIRO**  
DEPUTY DIRECTOR

STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510  
FAX NO: (808) 587-1560

October 15, 2008

## TAX INFORMATION RELEASE NO. 2008-03

RE: Deposits in the Nature of Cash Bond Made to Suspend the Running of Interest on Potential Underpayments

The purpose of this Tax Information Release (TIR) is to provide guidance to taxpayers and practitioners on the Department of Taxation's (Department) procedures allowing deposits in the nature of a cash bond to be made to suspend the running of interest on potential underpayments.

### **I. Deposits Allowed to Suspend the Running of Interest on Underpayments**

Effective immediately, taxpayers may submit a deposit to the Department that will suspend the running of interest on any potential underpayment later determined due to the State. Under current law, a taxpayer is obligated to pay interest to the State on underpayments at a rate of approximately 8% per year. By submitting a deposit as described in this TIR pursuant to the attached agreement, a taxpayer can effectively suspend the interest on an underpayment.

### **II. Procedures for Making a Deposit**

Any taxpayer seeking to suspend the running of interest on any matter that could result in a potential underpayment of tax should first contact the Department of Taxation Rules Office in writing, and advise the Rules Officer of the taxpayer's intent to submit a cash bond pursuant to this TIR. Once the Rules Office is notified of the taxpayer's intent to submit a cash bond, a staff attorney will contact the taxpayer and arrange for the drafting of the Cash Bond—Interest Tolling Agreement, as well as other internal procedural matters that must be commenced prior to the deposit being tendered to the Department.

### **III. Terms**

No cash bond with the effect of suspending the interest on potential underpayments will be accepted by the Department unless it is accompanied by an executed copy of the standard Cash Bond—Interest Tolling Agreement. A sample copy of this agreement is included with this TIR to apprise taxpayers and practitioners of the terms.

### Power of Attorney

Any tax practitioner advising a taxpayer with regard to this TIR should be prepared to submit a Power of Attorney on Form N-848 with the initial notice to the Rules Office.

### Disclosures Pursuant to Internal Revenue Code § 6603

Taxpayers should be prepared to make disclosures to the Department similar to those disclosures required under IRC § 6603 and Rev. Proc. 2005-18, 2005-1 CB 798.

### Description of Circumstances Surrounding Deposit

Taxpayers should be prepared with a narrative describing the circumstances surrounding the cash bond deposit. For example, the Department will be requesting information regarding the tax type, whether the taxpayer is under federal examination, and the tax periods under which the deposit will be made.

### Identification of Funds

All deposits must include a notation on the face of the check and include a phrase substantially similar to: "**DEPOSIT IN THE NATURE OF A CASH BOND—TAX YEARS 200X, 200Y, 200Z.**"

### Beginning of Interest Suspension

Immediately upon receipt of the cash bond deposit, the Department will credit the taxpayer's account by placing the deposit into a trust account in favor of the taxpayer. The Department will use internal Form A-63 to make this deposit. Form A-63 is not available to the public or the taxpayer executing the Cash Bond—Interest Tolling Agreement.

### Not Entitled to Interest

Taxpayers will not be entitled to earn interest on the deposit while the deposit is under the custody and control of the Department. However, where the deposit is moved into a fund mandated by law or court rule in order to perfect an appeal, taxpayer will be entitled to earn any interest provided by law.

### Return of Deposit on Demand

Taxpayers will be entitled to demand return of the cash bond. Immediately upon receipt of demand for return of the cash bond, the Department has five (5) days to initiate return of the deposit. The deposit will not be returned where the Department determines the assessment or collection would be in jeopardy.

Application of the Cash Bond

Where the taxpayer agrees to the ultimate assessment, the cash bond will be credited to the underpayment. Taxpayers can also direct that any remaining deposit be directed to the payment of any other tax liability.

Extension of the Statute of Limitations on Assessment

Lastly, the taxpayer will be required to include a provision extending the statute of limitations on assessment for 12 months following the Department's receipt of notice of the taxpayer's final tax liability determination where the deposit is being made due to a concurrent federal examination. Extensions of the statute of limitations for an audit conducted by the Department will be arranged through existing means, such as ordinary extension agreements.

**IV. Rules Office Contact**

The initial notice of intent to submit a cash bond deposit and all subsequent correspondence regarding this TIR should be directed to the following—

**Rules Office  
C/O CASH BOND DEPOSIT CORRESPONDENCE  
Hawaii Department of Taxation  
PO Box 259  
Honolulu, Hawaii 96809-0259**

**Phone: (808) 587-1569**

**Fax: (808) 587-1584**



**KURT KAWAFUCHI**  
Director of Taxation

## **CASH BOND-INTEREST TOLLING**

### **AGREEMENT**

This CASH BOND-INTEREST TOLLING AGREEMENT ("Agreement") is made effective this \_\_\_ day of \_\_\_\_\_, 200\_, by and between **[TAXPAYER]**, a corporation organized under the laws of the State of \_\_\_\_\_, with its principal place of business at \_\_\_\_\_, ("Taxpayer") and the **DEPARTMENT OF TAXATION, STATE OF HAWAII** (the "Department"), pursuant to the Department's authority under Section 231-3 (13), Hawaii Revised Statutes ("HRS"), to enter into an agreement with a taxpayer relating to its tax liabilities.

### **RECITALS**

**WHEREAS**, the Department and Taxpayer desire to facilitate a deposit with the Department in the nature of a cash bond credited to the Taxpayer's account, and the tolling of interest charged by statute for any unpaid tax liability of the Taxpayer;

**WHEREAS**, Taxpayer's Hawaii Tax Identification number is **[XXXXXXXX]**;

**WHEREAS**, Taxpayer is a **[INSERT DESCRIPTION OF TAXPAYER'S RELEVANT ACTIVITIES; WHETHER THE AUDIT OR ASSESSMENT IS DUE TO A FEDERAL EXAMINATION; IDENTIFY THE "DEPOSIT PERIOD" DURING WHICH INTEREST WILL BE TOLLED; IDENTIFY THE DISPUTED ITEMS]**

**WHEREAS**, Taxpayer asserts that the resolution of the taxable character of the Disputed Items may take several months to resolve. During the time the Disputed Items are examined or litigated, if Taxpayer is found liable for any unpaid tax on the Disputed Items, the Taxpayer is liable for statutory interest at the rate of 8% per year.

**WHEREAS**, in the interest of minimizing the amount of interest owed if Taxpayer is ultimately found liable for unpaid tax, Taxpayer desires to deposit, and the Department desires to receive, money to be credited to Taxpayer's account in order to toll the running of interest on any amount of tax found to be unpaid, not to exceed the amount ultimately deposited with the Department;

**WHEREAS**, under current and past federal procedures, a taxpayer is entitled to make a deposit with the Internal Revenue Service for purposes of tolling the charging of interest at the time the deposit is received on any taxes unpaid, both prior to and after assessment is made;

**WHEREAS**, through these procedures, a taxpayer is entitled to request return of the money deposited within a certain amount of time;

**WHEREAS**, it is understood between the Department and Taxpayer that facilitation of the deposit in the form of a cash bond shall not result in any interest payable to Taxpayer from tendering the deposit to the Department. It is further understood that any earnings on the deposit that may occur while the deposit is managed by the Department will inure to the

benefit of the State of Hawaii;

**WHEREAS**, as of the date of this Agreement, **[DESCRIBE THE STAGE OF ASSESSMENT, WHETHER PROPOSED OR FINAL, OR WHETHER ON APPEAL]**; and

**WHEREAS**, the Department and Taxpayer, through this Agreement, seek to memorialize, to the extent practicable, the spirit of the procedures existing at the federal level in order to facilitate, out of convenience for both the Department and Taxpayer, the deposit of money to be credited to Taxpayer's account that will toll the running of interest on any unpaid tax to the extent of the deposit.

**NOW, THEREFORE**, in consideration of the Department's tolling of statutory interest on any tax found to be unpaid (not to exceed the deposited amount) and the Taxpayer's delivery of a deposit in the nature of a cash bond, the Department and Taxpayer hereby agree as follows:

1. Payment of Deposit in the Nature of a Cash Bond. Upon execution of this Agreement, Taxpayer shall make a remittance to the Department in the amount of **[INSERT AND DESCRIBE THE AMOUNT \$XXXXXX]** in the form of a cashier's check or certified check made payable to the Hawaii State Tax Collector (Cash Bond). This remittance shall be considered a deposit made in the nature of a cash bond for the sole purpose of tolling any interest charges to which the Department is entitled for any unpaid tax for the Deposit Period, as further provided in this Agreement. Taxpayer shall include on the face of the instrument the phrase "DEPOSIT IN THE NATURE OF A CASH BOND—TAX YEARS **[INSERT TAX YEARS XXXX; XXXX; XXXX]**."

2. Crediting of Cash Bond to Taxpayer's Account. Immediately upon receipt of the Taxpayer's Cash Bond, the Department shall direct that the Cash Bond be deposited within one of the Department's trust accounts for the benefit of Taxpayer and instruct the Department's Revenue Accounting Branch that the Cash Bond be held as a deposit, until assessable or collectable by the Department or upon Taxpayer's demand for the return of the Cash Bond, pursuant to the Department's Form A-63. The instructions on the Department's Form A-63 shall direct that the Cash Bond shall be deposited pursuant to this Agreement; pay zero interest to Taxpayer; and shall be returnable to Taxpayer upon demand pursuant to the terms or Paragraph 6.

3. Deposit Not Subject to a Claim for Credit or Refund. The Cash Bond deposited by Taxpayer shall not be subject to a claim by Taxpayer for credit or refund as an overpayment.

4. Taxpayer Not Entitled to Interest. Taxpayer shall not be entitled to interest on the amount of the Cash Bond deposited with the Department. Upon request for return of the Cash Bond, or any part thereof, only the amount requested (not to exceed the total amount of the Cash Bond) will be returned by the Department. Taxpayer acknowledges that earnings on the deposit in favor of the State of Hawaii may occur while the Cash Bond is held by the Department. Notwithstanding any earnings on account of the government's management of the Cash Bond, Taxpayer forever relinquishes any right to interest on the

Cash Bond.

5. Tolling of Interest Chargeable by the Department. On the day the Cash Bond is received by the Department pursuant to Paragraph 2, the Department shall toll the charging of interest on any **[IDENTIFY TAX TYPE]** taxes ultimately found to be unpaid during the Deposit Period. The Department's obligation to toll the interest on taxes paid under this paragraph shall not exceed the amount of the Cash Bond. Interest is not tolled on any deficiencies for any period prior to the date of the cash deposit. Therefore, if the tax liability found to be owed is in excess of the Cash Bond, the Taxpayer shall be liable for any interest chargeable on the difference between the ultimate tax liability found and the amount of the Cash Bond.

6. Return of Deposit Upon Request. Taxpayer may make a request for return of the Cash Bond as provided in this paragraph. The Taxpayer may request the return of all or part of the Cash Bond at any time before the Department is entitled to assess or collect any tax for the Deposit Period. The amount requested to be returned will be returned to the Taxpayer, without interest, unless the Department determines that assessment or collection of the tax determined to be due during the Deposit Period would be in jeopardy, or that the amount should be applied against any other liability owed by the Taxpayer. If the Department determines a jeopardy during the Deposit Period or Taxpayer is otherwise liable for unpaid taxes of whatever kind, the Cash Bond will not be returned and will be applied against any jeopardy or assessment or against any other liability. Request for return of the Cash Bond shall be made in writing to the Department's Oahu Field Audit Branch Manager. Upon request to return the Cash Bond, the Department shall initiate issuance of the Cash Bond within five (5) business days.

7. Application of the Cash Bond Upon Completion of Examination. If Taxpayer agrees to the full amount of the assessment of tax found to be due and owing the Department for the Deposit Period, Taxpayer agrees that an assessment will be made and any Cash Bond will be applied against the assessed liability as a payment of tax as of the date the assessment is made. If Taxpayer does not agree with the assessment, Taxpayer is entitled to retain the Cash Bond on its account during any appeals proceeding; except to the extent prepayment of tax is required by law or court rule to be made to a source other than the Department (*i.e.*, Tax Appeal Court) as a condition precedent to perfecting an appeal to any tribunal. If Taxpayer is required to prepay an amount of tax during the Deposit Period for purposes of any appeal, the Taxpayer shall be entitled to request return of the Cash Bond as provided in Paragraph 6. If Taxpayer is successful and it is determined that an amount of tax owed during the Deposit Period is less than the Cash Bond, Taxpayer is entitled to return of the Cash Bond without interest upon demand in writing as provided in Paragraph 6.

8. Application of the Cash Bond to **[IDENTIFY TAX TYPE]** and Other Taxes. The Cash Deposit being made pursuant to this Agreement is for the Taxpayer's Hawaii **[IDENTIFY TAX TYPE]** tax liability for the Deposit Period. If the Cash Bond deposited by Taxpayer exceeds any unpaid tax liability for the Deposit Period, Taxpayer may maintain the Cash Bond on deposit with the Department and direct that the Cash Bond be applied against another assessed or unassessed liability, subject to provisions of this Agreement.

9. **[INSERT FOR DEPOSITS DUE TO FEDERAL EXAM--Extension of the Statute of Limitations.** Taxpayer agrees that the statute of limitations period to make any and all assessments/credits regarding the tax liability of Taxpayer for the Deposit Period shall be extended for twelve (12) months following the Department's receipt of notice of the Taxpayer's final federal tax liability determination for the Deposit Period. Taxpayer and the Department agree that Taxpayer or the Internal Revenue Service may provide notice of the taxpayer's final federal tax liability determination. Final determination means the ultimate tax liability determined as owed the federal government by Taxpayer after exhausting all appeals, or as agreed to by Taxpayer through settlement or other means where Taxpayer's federal tax liability for the Deposit Period is resolved. Taxpayer and the Department agree that the statute of limitations extension under this paragraph may be further extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The Department agrees that the extension under this paragraph also extends the statutory periods within which Taxpayer may file a claim for refund for the Deposit Period.]

10. **No Admission.** Nothing in this Agreement constitutes an admission by the Department or the Taxpayer of the merits of the legal or factual issues involved. This Agreement is for the purposes stated expressly in this Agreement.

11. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the Department and the Taxpayer with respect to the matters covered by this Agreement and supersedes and cancels all prior discussions, negotiations, and other agreements, whether oral or in writing, between the Department and the Taxpayer with respect thereto. This Agreement may be amended or modified in a subsequent written instrument signed by both the Department and the Taxpayer.

12. **Authority.** The Taxpayer's undersigned representative represents and warrants that: (i) **[HE/SHE]** is authorized to execute and deliver this Agreement on behalf of the Taxpayer; (ii) **[HE/SHE]** is authorized to bind Taxpayer to the terms, conditions and agreements contained in this Agreement; (iii) this Agreement has been duly authorized, executed, and delivered by and on behalf of Taxpayer; and (iv) this Agreement constitutes the legal, valid, and binding obligation of Taxpayer and is enforceable against Taxpayer in accordance with its terms.

13. **Binding.** This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto, their estates, heirs, representatives, successors in interest, agents and assigns.

IN WITNESS WHEREOF, Taxpayer and the Department, by and through their duly authorized representatives, have caused this Agreement to be executed on the dates shown below.

Dated: \_\_\_\_\_

**[TAXPAYER]**

BY: \_\_\_\_\_

Title:

Dated: \_\_\_\_\_

STATE OF HAWAII  
DEPARTMENT OF TAXATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_, State of Hawaii