Hawaii Tax News

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Hawaii Tax News

Criminal Tax Trial Ends in Guilty Verdict

On August 7, 1997, a Maui jury returned a verdict of guilty for tax evasion on publisher Barbara Price. Extensive press coverage was done by the Honolulu Advertiser, the Honolulu Star-Bulletin, and the Maui News.

This was the State of Hawaii's first criminal tax trial. Ms. Barbara Price was the publisher of the magazine "The Menu Magazine." The magazine was initially published on Kauai in 1988. In 1992, Ms. Price moved to Maui. For the period 1992 through 1995, no general excise tax returns were filed although the magazine grossed approximately $550,000 during this period.

An indictment was returned for Ms. Price's tax evasion scheme in September 1996. A change in the new criminal tax laws precluded the government from charging Ms. Price for her failure to file and tax evasion scheme for the periods prior to July 1995.

Throughout the trial, Ms. Price asserted her First Amendment defense and presented her "good faith" belief that the tax laws did not apply to her. The government presented its case with the introduction of 360 documents as evidence. Five prosecution witnesses also were called to testify. Criminal Tax Investigator Stephen Hironaka was the last summary witness and testified on how the investigation started and on the evidence collected. He was on the witness stand for about 2 hours which included a cross examination by the defense.

The defense called character witnesses who testified Ms. Price sincerely believed she did not have to file her State general excise tax returns. Some of the witnesses were from California and Colorado and each witness admitted they are current with their tax filings.

The jury received their instructions at 11:30 a.m. and began their deliberations. At about 2:30 p.m., they returned with their verdict of guilty. Ms. Price will be sentenced by Judge John McConnell on October 8, 1997. The violation of tax evasion is a Class C felony punishable by a fine of up to $100,000, or imprisonment of up to 5 years, or both. ◘

Taxpayer Advocate

The Department of Taxation will institute a pilot program called the "Taxpayer Advocacy Program." Under this program, the Taxpayer Advocacy Office will assist and advise taxpayers and practitioners who have been unsuccessful in resolving their inquiries through normal or routine channels. Assistance will be provided taking into consideration each taxpayer's situation.

An important goal of this program is to ensure the taxpayer's rights while providing the taxpayer with prompt, courteous, and impartial treatment. Serving as the taxpayer advocate, this office will provide the taxpayer with one-stop service in a timely and complete manner to minimize the need for further contact by the taxpayer on the same issue.

Janet Fujii has been appointed as the Taxpayer Advocate. She will work under the direct supervision of the Director, and will report on any egregious situation or systemic problem. You may contact her at (808) 587-1791 or (808) 587-1540. ◘

IN THIS ISSUE

The Direct Line

By Director Ray K. Kamikawa

As explained in this issue of the Hawaii Tax News, a Taxpayer Advocate position has been established on a test basis. This initiative is in response to suggestions received at our Practitioners' Forum in June and is patterned after the Internal Revenue Service's Problem Resolution Office. In the coming months, we will evaluate how effectively this position is utilized. Having taken an employee off a line function to serve in this capacity, we must ensure that the Advocate contributes significantly to our operations.

We are putting together our legislative package for next year's Session. If you have suggestions for legislation, please submit them to us very soon. Many of you have assisted us in crafting and reviewing our legislative measures and I thank you for that. Some of you have expressed interest in testifying in support of our legislative initiatives--we will discuss how you can help in our December workshop.

Also in this issue, we explain the procedures for inspecting our internal manuals. This was a long time coming. Although no one requested the disclosure of these items, perhaps you were not aware of these in the first place to even know to ask. ◘

WSATA Conference

The Department of Taxation hosted the 46th Annual Conference of the Western States Association of Tax Administrators (WSATA) on September 14 through September 17 at the Hawaiian Regent Hotel. Approximately 200 tax administrators, practitioners from 14 western states, and businesses from across the nation attended the conference to keep abreast of the latest developments in taxation. ◘

December Workshop

A tax workshop on changes to the 1997 State tax forms will be offered by the Department sometime in December. Major revisions to the individual income tax forms will be made due to Act 281, Session Laws of Hawaii 1997, which changed the manner in which a nonresident or part-year resident calculates their Hawaii income tax liability. Also, the corporation income tax return will be modified to a one-page corporation income tax return with a copy of the federal return attached. CPE credit for CPAs attending the workshop will be available.

To have a registration form sent to you when they become available, call your nearest district tax office, or call the Department's Forms Request Line on Oahu at 587-7572, or toll-free from the neighbor islands and mainland U.S. at 1-800-222-7572, and leave a message on the Forms By Mail voice mail system. ◘

Power of Attorney

In the course of performing their assigned functions, Department of Taxation personnel often encounter the situation of dealing with a taxpayer's representative rather than directly with the taxpayer. In these instances, departmental personnel are primarily concerned with ensuring that the taxpayer's rights to privacy are not violated by the inadvertent disclosure of any confidential information to an unauthorized individual. Therefore, the Department requires that taxpayers or their designated representatives submit a properly completed Form N-848, Power of Attorney and Declaration of Representative, before departmental personnel may disseminate or disclose information about a taxpayer.

There are numerous types of situations which require the submission of the power of attorney forms. These situations may range from simple requests for copies of tax returns to more complex situations such as resolving a taxpayer's tax delinquencies or discussing audit adjustments and assessments. The filing of Form N-848 is required whether the designated representative is an

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Power of Attorney

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immediate family member, close friend, employee, or hired professional, such as a CPA or an attorney.

The Department will accept a faxed or mailed copy of a completed Form N-848. In addition, the substitution of federal Form 2848, Power of Attorney and Declaration of Representative, is also acceptable provided the Hawaii tax types and tax years are specifically noted. Write "Hawaii Department of Taxation" or "State of Hawaii" at the top of federal Form 2848. ◘

Installment Plans

The Department will negotiate installment payment plans with taxpayers who are unable to pay their tax in full. The following procedures have been implemented by the Collection Branch with respect to installment plans:

- Before entering into an installment plan, the taxpayer must:
  - File all outstanding tax returns
  - Complete Form CM-2, Statement of Financial Condition (or federal Form 433) if the account is over $10,000
- While on a payment plan, the taxpayer must file all tax returns and pay all taxes on a timely basis
- Interest will continue to accrue on the outstanding tax liability until it is paid in full
- Any refunds due will be credited to the outstanding liability
  - Crediting of the refunds does not take the place of the monthly installment payment
- Taxpayers are allowed up to 6 months to pay the outstanding tax liability without a tax lien being filed
- If a balloon payment is required on the sixth month installment, the sixth month installment cannot be more than 25% of the original tax liability
- Extension of the 6 months will be allowed without a tax lien being filed for taxpayers who provide evidence of hardship (disability, illness, personal crisis, etc.)
- Any other agreement in excess of 6 months must have a tax lien filed at the beginning of the agreement. Exceptions are as follows:
  - Sale of assets would generate proceeds to pay off the total delinquency (if the sale is subject to an executed contract without contingencies, escrow has been opened, closing is set within 45 days, and a claim is filed with, or levies made, on escrow);
  - Loan proceeds will be available within 30 days (but only upon evidence that a loan application has been submitted to a financial institution);
  - Collateral being offered has sufficient equity to cover the delinquency; or
  - There is doubt as to the liability for all, or a significant portion, of the delinquency
- All payment agreements in excess of $200,000 must be approved by the Director of Taxation
- In the case of default on a plan, the Department may revoke the plan and begin intense collection efforts without further notification. ◘

Offers in Compromise

Offers in compromise may be granted only if there is doubt as to collectibility, doubt as to liability, or both. The following procedures have been implemented by the Collection Branch with respect to offers in compromise:

- The taxpayer must submit the following forms to the collector handling the account:
  - Form CM-1, Offer in Compromise
  - Form CM-2, Statement of Financial Condition (or federal Form 433)
- A taxpayer that has an installment agreement prior to submitting the offer must continue making payments while the offer is being considered
- The collector will verify all financial information and may request for additional information or copies of documents listed on the forms
- If the collector recommends acceptance of the compromise, Form CM-5B, Acceptance Recommendation of the Compromise, is prepared
- Form CM-5B is signed by the authorized personnel and forwarded with the Director's recommendation to the Governor for his approval and signature
- The offer in compromise is considered accepted when the taxpayer, or the taxpayer's duly authorized agent, receives notice of the acceptance in writing. ◘

Criminal Investigations

As part of the reorganization of the Department, a criminal section was created to enforce the tax laws specified in the Hawaii Revised Statutes. In conjunction with the

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Criminal Investigations

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formation of the criminal section, the legislature passed new criminal statutes and substantially increased the penalties, as well as extending the statute of limitations from 2 years to 7 years.

In June of 1995, the Director hired Stephen Hironaka who retired from the Internal Revenue Service as a criminal investigator. The office of the Attorney General graciously accepted the flow of new tax cases for criminal prosecution with the assignment of Deputy Attorney General Larry Goya.

On August 7, 1997, a jury returned a verdict of guilty against Barbara Price for tax evasion. Mr. Marc Mendoza, who was also indicted, pled guilty on August 1, 1997, to a charge of contempt of court, a petty misdemeanor. Mr. Mendoza was given a prison sentence of 30 days. Mr. Mendoza spent approximately 4 months in prison awaiting his bail and his time spent was counted towards his 30 days sentence. Mr. Mendoza was ordered to leave the islands pursuant to his previous conviction for a firearms violation. For details on the trial, see **Criminal Tax Trial** on page 1.

Since Stephen Hironaka's arrival, the following cases have also been concluded against individuals and companies who have pled guilty or nolo contendre to the tax complaints:

Oahu:

- Snorkel Bob's was the first criminal conviction for the State of Hawaii which resulted in seven related corporations pleading guilty to not filing their annual general excise tax returns. The total tax, penalties and interest totaled $950,000.
- Two attorneys (Stephen Yamada and Bruss Keppler), a return preparation corporation and its president (Janell Israel), a medical physician's corporation (Nicanor Joaquin M.D., Inc.) have pled guilty or nolo contendre to failing to file their annual general excise tax returns. A welfare recipient (Venus Pagharion) who filed multiple claims for refunds was charged for theft and pled guilty, resulting in the State's first felony conviction relating to a tax offense.

Maui:

- A real estate company (ERA Maui Real Estate, Inc.), and a return preparation corporation (The Business Doctor, Inc.) pled nolo contendre to the charge of failing to file their annual general excise tax returns.

Hawaii:

- An attorney (Douglas Halsted), and a Certified Public Accountant (William Abell) have pled guilty or nolo contendre for their failure to file their annual general excise tax returns.

Molokai:

- A medical physician (Mark Schmalz) at the Molokai General Hospital pled nolo contendre to failing to file his annual general excise tax return.

The total taxes, penalties and interest for those convicted totaled over $1.9 million.

In addition to the convictions mentioned above, the Department is scheduled to go to trial on the following cases:

Oahu:

- Kathea Suzuki Latham who has been indicted for theft, a Class B felony punishable by up to 10 years and/or a fine of $10,000 for her failure to file and pay over the withholding taxes of employees in her corporation, Pacific Productions, Inc. Trial is scheduled for November 4, 1997.
- Sieghard Kramer and his company, Kramer and Associates, was also indicted for theft and failing to file the corporation's general excise tax return. Trial is scheduled for November 17, 1997.

Hawaii:

- Mr. Hamlet Bennett and his wife, Beverly, have failed to file his annual general excise tax returns. They have requested for a jury trial. Trial is scheduled for October 7, 1997.

Additional individuals and companies are being investigated; however, their names and schemes are confidential until formal charges are filed.

Deterrence is impossible to measure with dollars and cents. However, the addition of the criminal section has definitely made an impact on compliance. ◘

Fourth Quarter State Tax Collections

State tax collections for the fourth quarter of fiscal year 1997 totaled $814.9 million, a 0.5% increase over the $810.8 million collected in the fourth quarter of last fiscal year. The cumulative total of $3,271.6 million for fiscal year 1997 represents a 0.3% increase over the cumulative total of $3,262.6 million from last fiscal year.

First quarter collections of $872.1 million rose 4.8% over the previous year. Second quarter collections of $781.3 million increased a slight 0.4% over the previous year. Third quarter collections of $803.3 million decreased 4.4% from the previous year. These collections, together with the fourth quarter collections

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Tax Collections

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result in an average quarterly collection of $817.9 million for fiscal year 1997.

Monthly collections totaled $260.5 million, $261.8 million, and $292.6 million, respectively for April to June 1997, averaging $271.6 million per month.

While fourth quarter general excise tax, corporation net income tax, and transient accommodations tax collections rose 2.6%, 14.1%, and 12.1%, respectively over the previous year; fourth quarter individual income tax and all other tax collections dropped 2.0% and 4.7%, respectively over the previous year.

A total of $676.2 million was deposited into the state general fund for the fourth quarter, 1.3% more than the amount deposited in the fourth quarter of last fiscal year. A total of $2,771.9 million was deposited into the state general fund for fiscal year 1997, a 0.5% increase over the amount deposited in the last fiscal year. ◘

Internal Manuals Now Available

The Department is now offering for public inspection internal manuals that we feel would assist the general public in gaining a better understanding of the Department's polices and procedures.

As noted in the Summer 1997 newsletter, requests for a copy of an internal Department manual will be handled by the affected Division, Branch, or Staff Office and can be made either by phone, through the mail, or in person. There will be a charge for each manual, and payment must be made by the requester prior to the manual being released.

The following is a list of those internal Department manuals that the general public can now obtain a copy of, including the manual's purchase price and the Division, Branch, or Staff Office to contact:

1. *Collection Procedures Manual*, $28.00 - Compliance Division
2. *Field Auditor's Manual*, $25.75 - Compliance Division
3. *Forms Reproduction Policy*, $0.50 - Taxpayer Services Branch
4. *Hawaii Tax Information Manual*, *The Tax Answer Book*, $62.00 - Taxpayer Services Branch
5. *Penalties and Interest Manual*, $39.75 - Rules Office

The mailing addresses, phone numbers, and locations of the Division, Branch, or Staff Office are as follows:

Compliance Division
State of Hawaii - Department of Taxation
P. O. Box 259
Honolulu, HI 96809-0259
Phone No.: (808) 587-1611
Location: 830 Punchbowl St., Honolulu, HI

Taxpayer Services Branch
State of Hawaii - Department of Taxation
P. O. Box 259
Honolulu, HI 96809-0259
Phone No.: (808) 587-4242
Location: 830 Punchbowl St., Honolulu, HI

Rules Office
State of Hawaii - Department of Taxation
P. O. Box 259
Honolulu, HI 96809-0259
Phone No.: (808) 587-1530
Location: 830 Punchbowl St., Honolulu, HI
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Summer Workshop Report

Close to 150 people attended the Department's Summer Workshop which was held on Wednesday, July 30, 1997, at the McCoy Pavilion. The seminar covered such topics as Highlights of the "Church Activities" Seminar, Legislative Highlights, Proposed Amendments to Pension Rules, and Draft of Rules for Intermediary Services and Reimbursements. Director Ray Kamikawa was the main speaker on all the topics and was assisted by Grant Tanimoto, Jayna Uyehara, and Fay Morinaga-Pang of the Rules Office. This was the first Department seminar that the public paid a fee for attending. Most agreed that the $20 charge was a bargain for 4 hours of CPE credit. ◘

Practitioners' Forum

The second State practitioners' forum was held jointly with the Internal Revenue Service on September 10 in the Princess Ruth Keelikolani Building. Topics which were discussed

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Practitioners' Forum

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included revisions to the 1997 tax forms, recently issued tax information releases, and the WSATA conference.

Call or write about topics which you would like addressed at a future practitioners' forum to the Taxpayer Services Branch, Technical Section.

If you are interested in participating in these meetings, send your name, address, telephone number, and fax number to the Taxpayer Services Branch, Technical Section, Department of Taxation, 830 Punchbowl Street, Room 220, Honolulu, Hawaii 96813. Participants will be notified of the meeting details by the Taxpayer Services Branch, Technical Section. ◘

Questions from Readers

Here are the answers to questions from our readers regarding the application of the general excise tax to discount coupons and gift certificates.

Question: *A person used an Entertainment book coupon at a restaurant which offered two meals for the price of one meal. The person was charged for the price of one meal plus a tax of 4% on the actual value (the price of two meals). Is this the correct application of the general excise tax?*

Answer: The restaurant is responsible for paying the general excise tax on the gross income they receive from furnishing meals, including the amount of the tax passed on to the customer. There is no provision in the General Excise Tax Law which regulates the amount of the tax passed on to the customer. However, because the amount visibly passed on is represented as general excise tax, the restaurant cannot pass on an amount which exceeds the actual general excise tax due on the gross income from that transaction. To do so would be a misrepresentation of the facts and a violation of consumer protection laws administered by the Department of Commerce and Consumer Affairs' Office of Consumer Protection.

Question: *A person bought something at a retail store using a gift certificate. The purchase price and tax were rung up before the certificate was subtracted. But at a fast food restaurant, the discount coupon was subtracted from the price first, before adding the tax. What is the correct application of the general excise tax?*

Answer: First, there is a difference between gift certificates and discount coupons. It also is up to businesses as to whether they pass on the general excise tax, which is not a sales tax, but a tax on businesses. Given that, businesses offering gift certificates can pass on the general excise tax only once. It would be inappropriate to pass it on both at the time of purchase and the time of redemption.

Regarding coupons, subtracting the value of the coupon before or after tax is added depends on whether the seller will be reimbursed by a third party. If there is a reimbursement, the seller will have to pay the general excise tax on the full sales price before the coupon is deducted. For example, a person has a 50-cent coupon for a $5 item. The seller will receive $4.50 from the customer and 50 cents from the manufacturer for a total of $5 on which the 4% general excise tax must be paid. However, if the seller itself issues the coupon, then it is, in effect, giving customers a cash discount. So, if the customer has a 50-cent store coupon for a $5 item, the store will receive only $4.50 in actual payment and will be taxed on that amount only. ◘

Recently Issued Tax Publications

The following is a list of the Department of Taxation's recently issued publications. Copies of these publications may be obtained from any district tax office, by calling the Forms Request Line on Oahu, or via the Internet. Addresses and telephone numbers are provided on the last page of this newsletter.

TIR No. 97-2 (Revised) - Re-issued to clarify the original TIR No. 97-2. Clarifies that if any corporation in the unitary group has sufficient nexus with Hawaii, the combined income tax return must include the income and apportionment factors of all corporations of the unitary group.

TIR No. 97-3 - Provides information on the expansion of the "timely mailing treated as timely filing/paying rule" to documents and payments delivered by a designated private delivery service.

TIR No. 97-4 - Provides guidance regarding the application of the business entity classification rules under the "check-the-box" regulations to the Hawaii income tax and other taxes.

Announcement No. 97-5 - Adopts the Internal Revenue Service optional standard mileage rates.

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Recent Publications

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Announcement No. 97-6 - Announces the adoption of Hawaii Administrative Rules, relating to cost recovery fees for selected goods and services provided by the Department of Taxation.

Announcement No. 97-7 - Informs taxpayers of the increase in the cigarette tax rates. ◘

Pending Tax Publications

The following is a list of tax publications in progress, and the name and telephone number of the staff member assigned to the publication. We will coordinate with the Director's Advisory Group in opening new rules and TIR projects.

Hawaii Administrative Rules - Relating to penalty and interest imposition and waiver standards. (Jayna Uyehara, 587-1553)

Hawaii Administrative Rules - Relating to tax clearances. (Jayna Uyehara, 587-1553)

Hawaii Administrative Rules - Relating to bulk sales. (Jayna Uyehara, 587-1553)

Hawaii Administrative Rules - Relating to cost recovery. Authorizing the imposition of additional fees such as installment agreements. (Jayna Uyehara, 587-1553)

Hawaii Administrative Rules - Relating to the enterprise zones. (Grant Tanimoto, 587-1569)

Hawaii Administrative Rules - Relating to intermediary services. (Grant Tanimoto, 587-1569)

Hawaii Administrative Rules - Relating to the reimbursement exemption. (Grant Tanimoto, 587-1569)

Hawaii Administrative Rules - Amending the 90% payment requirement for state extensions to conform with the federal rule. (Grant Tanimoto, 587-1569)

Hawaii Administrative Rules - Amending the rules relating to the subcontract deduction. (Grant Tanimoto, 587-1569)

Hawaii Administrative Rules - Clarifying the application of the delivery rule for purposes of the general excise tax. (Fay Morinaga-Pang, 587-1564)

Hawaii Administrative Rules - Clarifying the definitions of "residence" and "disability" in section 18-235-1, HAR. (Guy Matsunaga, 587-1794)

Hawaii Administrative Rules - Clarifying the use of a resale certificate in section 18-237-13(b)(4), HAR. (Guy Matsunaga, 587-1794)

Hawaii Administrative Rules - Clarifying the application of the general excise tax to prepaid telephone calling cards. (Jayna Uyehara, 587-1553, Fay Morinaga-Pang, 587-1564)

Hawaii Administrative Rules - Clarifying the application of section 237-18(f), HRS, relating to tourism related services furnished to tour agents, tour packagers, or destination management companies. (Guy Matsunaga, 587-1794)

Hawaii Administrative Rules - Amendment of rules relating to the application of the general excise tax to condiments. (Guy Matsunaga, 587-1794)

Hawaii Administrative Rules - Clarifying the tax on written real property leases and the sublease deduction. (Marshall Dimond, 587-1533)

Hawaii Administrative Rules - Adoption of MTC regulation regarding the inclusion of net gains from the sale of certain intangibles in the sales factor of the apportionment formula. (Jim Watts, 587-1786)

TIR - Clarifying section 1 of S.B. No. 1951, relating to the motion picture income tax credit. (Grant Tanimoto, 587-1569)

TIR - Application of the general excise and use tax to companies leasing personal property. (Johnson Lau, 587-1562)

TIR - Nontaxability of earnings on IRA rollover from a pension plan. (Fay Morinaga-Pang, 587-1564)

TIR - Application of the general excise tax to satellite broadcasters. (Jayna Uyehara, 587-1553)

TIR - Application of the general excise tax to Internet service providers. (Jayna Uyehara, 587-1553)

TIR - Application of the general excise tax exemption for property shipped out-of-State. (Marshall Dimond, 587-1533)

TIR - Application of chapter 241, HRS, to mortgage brokers. (Marshall Dimond, 587-1533)

TIR - Application of the general excise tax to gift certificates. (Guy Matsunaga, 587-1794)

TIR - Application of the general excise tax to employee leasing companies. (Johnson Lau, 587-1562)

TIR - Application of the general excise tax to services; clarification of the place of performance test. (Johnson Lau, 587-1562)

TIR - Application of the state tax exemption for business development corporations. (Johnson Lau, 587-1562)

TIR - Revision of TIR No. 88-2, relating to the general excise tax exemption for certain computer services. (Marshall Dimond, 587-1533)

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DISTRICT TAX OFFICES

Forms and Information may be obtained from any district tax office, Mondays through Fridays, except State holidays, from 7:45 A.M. to 4:30 P.M.

WEB INFORMATION & FORMS

http://www.hawaii.gov/tax/tax.html

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Honolulu, HI 96813-5094
TELEPHONE:
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1-800-222-3229 (Toll-Free From Neighbor Islands and Mainland U.S.)
To Request Tax Forms:
808-587-7572
1-800-222-7572 (Toll-Free From Neighbor Islands and Mainland U.S.)
FAX: 808-587-1488

MAUI DISTRICT OFFICE

State Office Building
54 S. High Street
Wailuku, HI 96793-2198
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FAX: 808-984-8522

HAWAII DISTRICT OFFICE

State Office Building
75 Aupuni Street, #101
Hilo, HI 96720-4245
TELEPHONE: 808-974-6321
FAX: 808-974-6300

KAUAI DISTRICT OFFICE

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