LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

KURT KAWAFUCHI
DIRECTOR OF TAXATION

MARIE C. LADERTA
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

July 29, 2005

DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2005-06

RE: Act 131, Session Laws of Hawaii 2005, Relating to Tobacco (Act 131)

On June 16, 2005, the Governor signed into law S.B. No. 682, S.D. 2, H.D. 3, C.D. 1, which was an Administration-sponsored measure, as Act 131. Act 131 requires that, beginning December 1, 2006, every tobacco retailer engaged in business in the State obtain a retail tobacco permit from the Department of Taxation (Department). Act 131 also empowers the Department to suspend, revoke, or decline to renew a retail tobacco vendor's license for violations of tobacco laws, and criminalizes the retail sale of cigarettes and tobacco without a license. This Act became effective on its approval.

Act 131 will increase state revenues by enhancing the Department's ability to identify retailers that are selling tobacco products and to collect the full amount of tobacco taxes due to the State. Act 131 will also improve this Administration's efforts to identify and prosecute persons and entities that are knowingly selling tobacco products to minors.

RETAIL TOBACCO PERMITS

Each retail tobacco permit will cost $20, and duplicate permits will cost $5. Retail tobacco permits will be valid for one year from December 1 to November 30 of each calendar year and must be renewed annually. A retail tobacco permit shall be non-assignable and non-transferable from one entity to another.

A separate retail tobacco permit must be acquired for each retail location owned, operated, or controlled by a retailer. At each retail location, the retail tobacco permit must be displayed conspicuously and at all times. A retail tobacco permit must be displayed on each tobacco product vending machine, except where a permitted tobacco retailer owns the vending machine and operates the vending machine at the property identified on the retail tobacco permit. Any entity that operates as a tobacco dealer or wholesaler, but that also sells tobacco products to consumers at retail must also obtain a retail tobacco permit.

RECORD KEEPING REQUIREMENTS

Act 131 requires that tobacco retailers maintain certain records for their inventory of cigarettes and other tobacco products. For each purchase of cigarettes or other tobacco products, the tobacco retailer must retain the following records:

- A written statement containing the name and address of each source from which the tobacco retailer purchased cigarettes and/or other tobacco products.
- The date of delivery, quantity, and trade name or brand of the cigarettes and/or other tobacco products purchased.
- Copies of any documents generated by the purchase and/or acquisition of the cigarettes and/or other tobacco products, including purchase orders, invoices, bills of lading, other written statements, books, papers, and other records, including such documents that exist in electronic format.

Upon a request by the Department and/or the Department of the Attorney General to inspect and examine these records, the tobacco retailer must make these records available within twenty-four (24) hours of the request. Each tobacco retailer must maintain these records for a period of not less than three years, except where the Department and the Department of the Attorney General both consent to a shorter document retention date. The Department and the Department of the Attorney General are authorized by Act 131 to promulgate administrative rules to require a longer retention date for specific records.

ADMINISTRATIVE SANCTIONS

The Department may suspend or (after giving notice and an opportunity for the retailer to have a hearing) revoke or decline to renew a tobacco retailer's permit if a tobacco retailer violates Act 131, any other provision of chapter 245, HRS, or any administrative rule promulgated under chapter 245, HRS.

In addition, the Department may suspend or (after giving notice and an opportunity for the retailer to have a hearing) revoke or decline to renew a tobacco retailer's permit if any other "good cause" exists. "Good cause" may include, but is not limited to, instances where:

- The tobacco retailer has submitted a false or fraudulent application for a retail tobacco permit or has provided a false statement in the permit application; or
- The tobacco retailer has possessed or displayed a false or fraudulent retail tobacco permit.

If the Department suspends a tobacco retailer's permit, the Department will immediately request that the tobacco retailer surrender any permit and/or duplicate permit that is held by the tobacco retailer. Upon the Department's request, the tobacco retailer must promptly surrender such permit and/or any duplicate permit to the Department. If the tobacco retailer has not been afforded an opportunity for a hearing prior to the Department's suspension of its retail tobacco permit, the Department must notify the tobacco retailer of its rights to a hearing and must provide a hearing if requested by the tobacco retailer.

In addition, any cigarettes or other tobacco products that are unlawfully sold, possessed, stored, acquired, distributed, or transported in violation of Act 131 may be seized and ordered forfeited in accordance with chapter 712A, HRS.

CRIMINAL SANCTIONS

Starting March 1, 2007, any person or entity selling tobacco at retail who does not possess a retail tobacco permit shall be subject to criminal penalties of up to a year in prison and a $2,000 fine, depending upon the type and amount of tobacco sold. A person or entity that is convicted of violating this retail tobacco permit law for a second time in a five-year period may be subject to imprisonment of up to five years and a fine of up to $10,000, depending upon the amount and type of tobacco sold for each conviction.

DEPARTMENT CONTACT INFORMATION

The Department will be developing the retail tobacco permit application, forms, and other materials and publications and/or administrative rules as may be necessary in advance of the December 1, 2006, deadline to obtain a retail tobacco permit.

If you have any questions regarding the licensing process, please call the Department's Licensing Section at 587-1455. You may also send email inquiries to tax.licensing@hawaii.gov. To expedite a response, please type "Retail Tobacco Permit" on the subject line of your email.

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.



KURT KAWAFUCHI
Director of Taxation

HRS Sections Explained: HRS Sections 245-2, 245-__; 245-__; 245-__.