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July 29, 2005

DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2005-11

RE: Act 247, Session Laws of Hawaii 2005, Relating to County Surcharge on State Tax (Act 247)

On July 13, 2005, H.B. No. 1309, H.D. 2, S.D. 2, C.D. 1 was enacted into law as Act 247. Act 247 authorizes the counties to levy a county surcharge on state tax to fund public transportation systems. However, the Governor has requested certain changes to Act 247 as enacted. This announcement describes Act 247 as enacted on July 13, 2005, without the changes requested by the Governor.

Act 247 amends Chapter 46, HRS, to authorize each county to levy a surcharge on the general excise tax and use tax. The surcharge cannot be levied prior to January 1, 2007. To establish the surcharge, the county must adopt an ordinance prior to December 31, 2005. The county must hold a public hearing on the ordinance before it is adopted. Within 10 days of adopting the ordinance establishing the surcharge, the county must notify the director of taxation that the ordinance has been adopted.

Act 247 limits how the counties can spend the surcharge. The City and County of Honolulu is required to use the surcharge for operating and capital costs of a locally preferred alternative for a mass transit project and expenses in complying with the Americans with Disabilities Act of 1990 with respect to the mass transit project. The City and County of Honolulu cannot use the surcharge to build or repair public roads or highways, bicycle paths, or support public transportation systems already in existence prior to July 13, 2005. The other counties must use the surcharge for operating or capital costs of public transportation within each county for public transportation systems, including public roadways or highways, public buses, trains, ferries, pedestrian paths or sidewalks, or bicycle paths and expenses in complying with the Americans with Disabilities Act of 1990 with respect to the foregoing. "Capital costs" means nonrecurring costs required to construct a transit facility or system, including debt service, costs of land acquisition and development, acquiring of rights-of-way, planning, design, construction, and equipping and furnishing the facility or system.

Act 247 amends Chapters 237 and 238 to provide that all provisions of those chapters are applicable to the county surcharge. The county surcharge may not be at a rate greater than one-half percent of all gross proceeds and gross income subject to general excise and use taxation. In

addition, the county surcharge does not apply to gross income or gross proceeds taxable at the one-half percent tax rate or the 0.15 percent tax rate. The county surcharge also does not apply to any transactions, amounts, persons, gross income or gross proceeds exempt from general excise or use tax. Act 247 grants the director of taxation the exclusive right and power to determine the county or counties in which a person is engaged in business or if a person is engaged in business in more than one county to apportion the tax between the counties.

Act 247 provides special rules in Chapter 237, HRS, for written contracts entered into before June 30 of the year prior to the taxable year in which the tax becomes effective. If a written contract, entered into before June 30 of the year prior to the year in which the county surcharge becomes effective, requires the passing on of the general excise tax but does not provide for the passing on of an increase in the rate of the general excise tax, then the county surcharge does not apply. However, the county surcharge does apply to the gross income or gross proceeds from all contracts entered into after June 30 of the year prior to the year of the effective date of the county surcharge regardless of whether the contract allows for the passing on of any tax or any tax increases.

Act 247 amends section 437D-8.4(a), HRS, to allow a lessor of a rental motor vehicle to visibly pass on to a lessee the county surcharge, provided that the lessor itemizes the tax for the lessee.

Act 247 directs the director of taxation to revise the general excise tax and use tax forms to clearly and separately designate the imposition and payment of the county surcharge. In addition, the taxpayer would be required to file a schedule with the taxpayer's periodic and annual general excise tax and use tax returns summarizing the amount of taxes assigned to each county. Fiscal year taxpayers are required to file a short period return for the first year the county surcharge becomes effective.

The penalties for failure to file a tax return provided in section 231-39, HRS, shall be imposed on the amount of the surcharge due on the return being filed for the failure to file the schedule required to accompany the return. In addition, a penalty of ten percent of the amount of the surcharge and tax due on the return shall be imposed for the failure to file the schedule or the failure to correctly report the assignment of the general excise or use tax by taxation district on the required schedule.

Act 247 amends Chapter 248, HRS, by providing that all county surcharges collected by the director of taxation be paid into the state treasury quarterly, within 10 working days after collection, and placed by the director of finance in special accounts. The director of finance will deduct ten percent of the gross proceeds of a respective county's surcharge to reimburse the State for the costs of assessment, collection, and disposition of the county surcharge. These amounts will be general fund realizations of the State. On a quarterly basis, the director of finance will pay the counties their share of the county surcharge and will be a general fund realization of the county to be used as specified in Act 247.

Act 247 repeals Chapter 51D, HRS, concerning mass transit.

Act 247 is effective as of July 13, 2005, provided that:

(1) If none of the counties adopt an ordinance to levy a county surcharge by December 31, 2005, then Act 247 is repealed and section 437D-8.4(a), HRS, is reenacted in the form in which it read on July 12, 2005;

(2) If any county does not adopt an ordinance to levy a county surcharge by December 31, 2005, that county is prohibited from adopting such an ordinance, unless otherwise authorized by the legislature through a separate legislative act; and

(3) If an ordinance to levy a county surcharge is adopted by December 31, 2005, the ordinance and Act 247 are repealed on December 31, 2022 and section 437D-8.4, HRS, is reenacted in the form in which it read on July 12, 2005.

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.



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Director of Taxation

HRS Sections Explained: HRS Sections 46-__, 237-__, 238-__, 248-__, 437D-8.4.