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August 3, 2005

DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2005-13

RE: Act 3, First Special Session Laws of Hawaii 2005, Relating to Streamlined Sales and Use Tax Agreement (Act 3)

On July 12, 2005, the Hawaii Legislature enacted H.B. No. 1224, S.D. 1, C.D. 1 into law as Act 3 by overriding the veto of the Governor. Act 3 adds provisions to Hawaii law that will enable the State to be in compliance with the Streamlined Sales and Use Tax Agreement (the "Agreement").

The Agreement was created by state governments (with input from local governments and the private sector) to simplify and modernize sales and use tax collection and administration on a national basis. Due to the expansion of e-commerce, the states recognized that a significant revenue loss was occurring. The Agreement attempts to recapture this lost revenue by encouraging out-of-state sellers to voluntarily collect sales and use tax for each participating state in exchange for amnesty for past, uncollected sales and use tax. To enter into the Agreement, a state must conform its laws to be in compliance with the Agreement.

Act 3 amends Hawaii Revised Statutes Chapter 231 to provide sellers three methods of collecting and remitting sales and use tax in accordance with the Agreement. Under model 1, a seller could select a certified service provider as an agent to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases. Under model 2, a seller could select a certified automated system, which calculates the amount of tax due on a transaction. Under model 3, a seller could use its own proprietary automated sales tax system that has been certified as a certified automated system. A monetary allowance from the State will be allowed to the sellers to help defray the seller's costs of collecting the sales and use tax.

The Act also limits the liability of sellers who collect tax pursuant to the Agreement in certain circumstances. Sellers will not be held liable for collecting an incorrect amount of tax as a result of the seller relying on erroneous data provided by the director of the Department of Taxation ("Department") with respect to tax rates, boundaries, or taxing jurisdiction assignments. In addition, in connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if the seller uses either a

provider or automated system certified by the State in the collection of the sales or use taxes and has remitted to the State all taxes collected less any deductions, credits, or collection allowances.

The Act amends section 255D-3, HRS, by deleting the requirement that the Department consult with an advisory council appointed by the Governor regarding the Agreement. In addition, section 255D-4, HRS, was amended to require the concurrence of the legislature before the Department enters into the Agreement.

The Act requires that no later than August 1, 2005, the Department together with three designees selected by the president of the senate and three designees selected by the speaker of the house of representatives must identify issues that need to be resolved in order to enter into the Agreement, including conforming Hawaii's existing general excise tax law to the Agreement, and must conduct informational briefings for the legislature on the Department's efforts to comply with this Act.

In addition, the Act requires the Department to submit proposed legislation 20 days prior to the convening of the 2006 regular legislative session for enactment prior to January 1, 2007, that provides any further amendments required in order to enter into the Agreement. The Act appropriates $50,000 to the office of the auditor for technical assistance and briefings for the legislature to understand what measures are needed to comply with the Agreement.

The Act is effective as of July 12, 2005, except for the $50,000 appropriation, which is effective as of July 1, 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 231-__, 255D-3, and 255D-4