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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2008-05

RE: Taxation of Fees Assessed by Acts of the 2008 Legislative Sessions

The purpose of this announcement is to notify taxpayers and tax practitioners of the fees subject to Hawaii taxation that were imposed by Acts of the 2008 Regular Session and First Special Session of the Hawaii Legislature.

ACT 226, SLH 2008 (SB 2365 SD 1, HD 1, CD 1), ASSESSING VARIOUS RENTAL MOTOR VEHICLE CUSTOMER FACILITY CHARGES

Act 226 amends Hawaii Revised Statutes (HRS) § 261-7, to authorize the assessment of Rental Motor Vehicle Customer Facility Charges. According to the Department of Transportation, these charges are assessed on the customers who benefit from the use of any type of rental motor vehicle facility or service provided by the Department of Transportation or the State at any airport. The charges are to be collected by the lessors and paid to the Department of Transportation. The Rental Motor Vehicle Customer Facility Charges assessed upon customers under Act 226 are not subject to Hawaii income or general excise tax. These charges are not subject to tax because: (1) these charges are assessed upon the customer, (2) the business serves in the capacity of a conduit or agent of the Department as collector, and (3) these monies do not represent gross income or gross proceeds subject to Hawaii income or general excise tax.

ACT 3, FIRST SPECIAL SESSION LAWS OF HAWAII 2008 (HB 2843 HD 2, SD 2, CD 1), ASSESSING AN INVASIVE SPECIES FEE ON FREIGHT

Act 3 modifies HRS § 150A-5.3, to assess a fee for the inspection, quarantine, and eradication of invasive species on any freight brought into Hawaii. The fee must be paid by the person responsible for paying the freight charges (*e.g.*, the customer). The transportation company is responsible for collecting the fee and forwarding payment to the Department of Agriculture. Furthermore, Section 3 eliminates liability for the fee on the part of the transportation company if the customer does not pay the fee. The fee assessed by Act 3 is not subject to Hawaii income or

general excise tax. This fee is not subject to tax because: (1) this fee is assessed upon the customer, (2) the transportation company serves in the capacity of a conduit or agent of the Department as collector, and (3) these monies do not represent gross income or gross proceeds subject to Hawaii income or general excise tax.

ACT 13, FIRST SPECIAL SESSION LAWS OF HAWAII 2008 (SB 2843, SD 2, HD 3, CD 1), ASSESSING A FEE FOR ELECTRONIC DEVICE RECYCLING

Act 13 creates a new chapter that assesses a $5,000 fee, starting January 1, 2009, on each manufacturer of a new electronic device offered for sale for delivery in Hawaii. The fee assessed under Act 13 is on the electronic device manufacturing business. If an electronic device manufacturing business visibly passes on this fee, or any part thereof, to its customers, any amount representing a recovery of the fee is subject to both Hawaii income and general excise taxes. The fee is taxable if passed on to customers because the tax is not expressly exempt from taxation and the business cannot be considered a conduit or agent of these monies.

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