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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2008-06

RE: HIGH TECHNOLOGY BUSINESS INVESTMENT TAX CREDIT COMFORT RULINGS

The Department of Taxation (Department) makes the following announcement regarding its processing of comfort rulings for high technology tax incentives available under HRS § 235-110.9 and HRS § 235-110.91 (High Tech Incentives).

RULINGS ISSUED PRIOR TO THIS ANNOUNCEMENT

Taxpayers or QHTBs with rulings issued prior to this Announcement, where the facts and the law upon which the ruling is based remain unchanged, may continue to rely on the ruling and are encouraged to do so, notwithstanding the Department's current policy deliberations discussed below.

TEMPORARY DELAY IN ISSUANCE OF RULINGS

For taxpayers or QHTBs without a comfort ruling from the Department on matters relating to High Tech Incentives as of the date of this announcement (whether or not submitted to the Department), such persons are encouraged to proceed as usual and to submit ruling applications in the ordinary course. Moreover, where the facts of a particular High Tech Incentive plan would clearly qualify for the High Tech Incentives without the need for the Department's review and analysis through a comfort ruling, these businesses may continue to seek investors and claim any High Tech Incentive credits as allowed by the law. The law and the Department do not require that a business or taxpayer obtain a comfort ruling in order for the investor to claim a tax credit under HRS § 235-110.9.

CURRENT POLICY DELIBERATIONS OF THE DEPARTMENT FOR PROSPECTIVE APPLICATION

As of the date of this Announcement, the Department is actively reviewing how comfort rulings will be processed for High Tech Incentives on a prospective basis. The Department is discussing providing administrative guidance on, among other things:

Gross Income Test analysis under HRS § 235-110.9;
Definitions of qualified research;
Use of investment funds for which a credit was claimed under HRS § 235-110.9;
Determinations of novelty or innovativeness thresholds for qualified research; and
Capital cost projections and project scope disclosures.

The Department anticipates issuing general published administrative guidance regarding the conclusions of its policy deliberations before November 1, 2008. ***Any policy conclusions drawn by the Department will be made prospective as of the date of any additional guidance so as not to jeopardize investments made relying on current Department policy.***

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Director of Taxation