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December 15, 2008

DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2008-10

RE: Relief for Taxpayers Affected by High Winds, Heavy Rains and Flooding From December 10, 2008 to December 16, 2008, in the Counties of Kaua'i, Maui and the City and County of Honolulu

In light of the heavy winds, heavy rain and flooding that have caused substantial damage to homes and businesses in the counties of Kaua'i, Maui and the City and County of Honolulu, the state Department of Taxation recognizes that affected taxpayers may have difficulty meeting their tax obligations. The Department, therefore, will consider requests for extensions to file and pay taxes and waivers of penalties and interest on a case-by-case basis. In addition, the department will also follow federal casualty loss provisions in the event of a Presidential declaration of a natural disaster.

I. Mark Returns "2008 O'ahu/Kaua'i/Maui Heavy Rains & Flood Relief"

All returns (both individual and business) that are filed under the provisions of this Announcement should be clearly marked "2008 O'ahu/Kaua'i/Maui Heavy Rains & Flood Relief" on the top center of the return. Do not place the words "2008 O'ahu/Kaua'i/Maui Heavy Rains & Flood Relief" in the "DO NOT WRITE IN THIS SPACE" area in the upper right corner of any return. Taxpayers and tax practitioners who want to use the provisions of this announcement, but whose addresses (on file with the department) are not within the areas directly affected, should also include a brief statement as to how the disaster adversely affected their ability to meet their tax obligations.

II. Hawai'i Employer's Withholding Taxes

Taxpayers whose Hawai'i employer's withholding tax returns are due December 15, 2008, and who, as a result of the rains and flooding cannot meet this due date, may file their returns and pay the tax due by January 15, 2009, without incurring any penalties or interest. No late filing penalty will be imposed for returns that are postmarked on or before January 15, 2009. This also applies to those who are required under §235-62, HRS, to file monthly and remit payments on a semi-weekly schedule (tax payments may be made when the return is filed).

For employers who have employees at several locations in the state, including locations affected by the heavy winds, heavy rains and flooding, must file their returns on time, including payments for taxes due. If complete information from locations affected by the winds, rains and flooding is not available by the due date of the return, an amended return should be filed when the information becomes available.

III. Special Consideration

The Department will consider requests for extensions to file and pay other taxes and waivers of penalties and interest on a case-by-case basis. Each request should include a statement as to how the 2008 O'ahu, Kaua'i, or Maui heavy winds, rains and flooding adversely impacted the taxpayer.

IV. Casualty Losses

For purposes of the Hawai'i Income Tax Law, a taxpayer may claim all of the casualty loss deductions allowed by §165 of the Internal Revenue Code (See IRS Publication 547 for more information). Casualty losses on business property are deductible in full. The first $100 of the eligible unreimbursed casualty losses on non-business property is not deductible. The remaining loss is deductible to the extent it exceeds 10 percent of the taxpayer's Hawai'i adjusted gross income. The following options are available after the taxpayer has determined the amount of losses:

1. Taxpayers may deduct the losses on their 2008 income tax returns; or

2. In the event that the President of the United States of America issues a proclamation of a natural disaster, taxpayers may elect to claim a casualty loss deduction on their 2007 income tax returns, instead of on their 2008 income tax returns, for losses from the heavy winds, rains and flooding December 10, 2008 to December 16, 2008 (an amended return may need to be filed if this option is chosen); or

3. Taxpayers may elect to deduct the losses in five equal installments over a period of five consecutive years, beginning with the 2008 Hawai'i income tax return; or

4. If the taxpayer's casualty loss is more than his or her income, the taxpayer may have a net operating loss. A net operating loss may be used to lower taxes in an earlier year, allowing the taxpayer to receive a refund for taxes that have already been paid. Or if the taxpayer elects, a net operating loss may be used to lower taxes in a later year. The taxpayer does not have to be a business to claim this benefit; all taxpayers may claim this carryback or carryover net operating loss.

V. General Excise Tax Exemption for Insurance Proceeds Received Because of a Natural Disaster, §237-24.7(6), HRS

On December 12, 2008, Governor Lingle signed a State Disaster Proclamation in which she determined (pursuant to §209-2, HRS) that a disaster had occurred in the City and County of Honolulu and counties of Kaua'i and Maui. Therefore, taxpayers may be eligible for this general excise tax exemption if they receive amounts under property and casualty insurance policies for damage or loss of inventory used in a trade or business located within the City & County of Honolulu or the affected portions of Kaua'i or Maui. Please refer to the instructions for Forms G-45 and G-49 for more information.

Tax forms and information are available on the Department's website at www.hawaii.gov/tax. Please call the Department's Forms Request Line at 808-587-7572, or toll-free from the neighbor islands and continental U.S. at 1-800-222-7572 to request the appropriate forms. Additional information is available by calling the Taxpayer Services Branch during business hours at 587-4242, or toll-free at 1-800-222-3229, or by e-mail at Taxpayer.Services@hawaii.gov.

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for KURT KAWAFUCHI
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