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May 21, 2009

DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2009-03

RE: Act 61, Session Laws of Hawaii 2009, Relating to Taxation.

On May 8, 2009, the Legislature overrode Governor Linda Lingle's veto and Senate Bill 1111, SD 1, HD 1, CD1 became law as Act 61.

Act 61 increases the transient accommodations tax.

For the period beginning July 1, 2009 to June 30, 2010, the tax increases by one per cent, from 7.25% to 8.25%.

For the period beginning July 1, 2010 to June 30, 2015, the tax increases another one per cent to 9.25%.

Act 61 will be repealed on June 30, 2015, and the transient accommodation tax rate will be reenacted at 7.25% for the period beginning July 1, 2015, and thereafter.

The Transient Accommodations Tax is levied upon every operator and plan manager on the gross rental or gross rental proceeds derived from furnishing transient accommodations. Gross rental or gross rental proceeds derived from transient accommodations furnished could be subject to different tax rates depending on the timing of the payments received under the cash basis accounting method and on the outcome of the all events test under the accrual basis accounting method. Under the cash basis accounting method, gross proceeds from transient accommodations furnished prior to July 1, 2009 will be subject to the 7.25% transient accommodations tax rate if payments are actually or constructively received prior to July 1, 2009. However, the gross proceeds from the same transactions will be subject to the 8.25% tax rate if the payments are actually or constructively received on or after July 1, 2009.

Under the accrual basis accounting method, gross proceeds from transactions occurring prior to July 1, 2009 will be subject to the 7.25% tax rate if the right to receive such income is fixed under the all events test prior to July 1, 2009, but will be subject to the 8.25% transient accommodations tax rate if the right to receive such income is fixed under the all events test on or after July 1, 2009.

The accounting method principle governs when gross income will be taxable. Accordingly, any income taken into account under the taxpayer's method of accounting after July 1, 2009 will be subject to the 8.25% transient accommodations tax rate. The same analysis applies when the rate increases on July 1, 2010, and again when the rate returns to 7.25% on June 30, 2015.

Tax form books will not be re-issued and new forms may not be available when the tax increases to 8.25% on July 1, 2009; therefore, the department will continue to accept a Form TA-1, Periodic Transient Accommodations Tax Form, which lists .0725 in the rate column after July 1, 2009, as long as the taxpayer changes the .0725 to .0825, the taxpayer calculates the tax owed using .0825, and the period covered by the return does not include more than one tax rate. The department is preparing amendments to the form to allow for multiple rates; and once a new form is ready, the department will make it available at the department and on the form section of its website. Fiscal year taxpayers filing on a quarterly or semi-annual basis where the period straddles two different tax rates must file the new Form TA-1, which will be available shortly.

With regard to the Form TA-2, Transient Accommodations Tax Annual Return & Reconciliation, for taxable years ending after June 30, 2009, the department will not accept a Form TA-2 that lists only .0725 in the rate column. If a taxpayer is required by law to file a Form TA-2 before an amended form has been made available at the department and on its website, then the taxpayer should call 587-4242 for filing instructions.

For more information on Act 61, please contact the Rules Office at 808-587-1577.



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