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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2009-05

RE: Act 58, Session Laws of Hawaii 2009, Relating to Tax on Tobacco Products Other Than Cigarettes.

On May 8, 2009, the Legislature overrode Governor Linda Lingle's veto and House Bill 895, HD 2, SD 2, CD1 became law as Act 58.

The Department of Taxation ("Department") would like to clarify some aspects of Act 58. A definition of "little cigar" was added to Section 245-1, Hawaii Revised Statutes ("HRS"), without being incorporated into other definitions in Section 245-1, HRS, as well as other provisions throughout Chapter 245, HRS, necessary for the proper administration of the tax under Title 14, HRS. Such incorporation was necessary because Act 58 also amends the definition of "tobacco products," so that "little cigars" are not "tobacco products." Because the definition of "dealer" and "wholesaler," for example, was not also amended to include "little cigars," it is unclear whether a person possessing only "little cigars" is taxed as a dealer. Based upon the Department's interpretation of Act 58 that the tax on "little cigars" is to be administered as part of Chapter 245, HRS, the Department will administer the tax on "little cigars" in the same manner as the tax on "tobacco products," which is in keeping with the Department's general statutory authority to collect all taxes imposed under Title 14, pursuant to Section 231-3(2), HRS.

Act 58 adds language to tax "tobacco products" at a rate of 70% of the wholesale price and cigars at a rate of 50% of the wholesale price. Although paragraph 12 of Section 245-3(a), HRS, imposing an excise tax on "tobacco products" does state that such tobacco products shall be taxed except as provided in paragraph 13, which imposes an excise tax on cigars, paragraph 13 does not explicitly provide for an exception. And as cigars are, by definition, tobacco products, one interpretation of these two paragraphs is that cigars are taxed at 120% of the wholesale price. Because such an interpretation would leave the exception language without any meaning, the Department interprets paragraph 12 as taxing all tobacco products except cigars at 70% of the wholesale price, and paragraph 13 as taxing cigars meeting the definition in paragraph 13 at 50% of the wholesale price.

Also with regard to the language added by Act 58 imposing a tax upon tobacco products and cigars, instead of adding new paragraphs to tax these products at the new rates on or after September 30,

2009, the existing paragraph was amended to provide only that the tax would be imposed on and after September 30, 2009. When these amendments are read together with the effective date of Act 58, the 40% tax on tobacco products that existed prior to Act 58 disappears. Although it may not have been the intent of the Legislature to provide a period of time where tobacco products were not subject to an excise tax, the unambiguous language of Act 58 so provides. Therefore, for the period between May 8, 2009 and September 29, 2009, there is no tax imposed upon tobacco products.

Finally, although the excise tax on "little cigars" is administered in a manner similar to tobacco products, the excise tax itself is calculated similarly to that imposed against cigarettes. Due to the interaction, similar to the one mentioned above, between the amended language and the effective date, there is no tax upon "little cigars" until October 1, 2009. On and after October 1, 2009, "little cigars" shall be taxed at 11.00 cents for each "little cigar" sold, used, or possessed by a wholesaler or dealer.

Act 58 produces the following tax scenarios for 2009:

For "little cigars" (as defined in Section 245-1, HRS) :
From January 1, 2009 through May 7, 2009: 40% of the wholesale price.
From May 8, 2009 through September 30, 2009: No tax.
From October 1, 2009: 11.00 cents for each little cigar.

For "tobacco products," other than cigars (as defined in Section 245-3(a)(13), HRS):
From January 1, 2009 through May 7, 2009: 40% of the wholesale price.
From May 8, 2009 through September 29, 2009: No tax.
From September 30, 2009: 70% of the wholesale price.

For cigars (as defined in Section 245-3(a)(13), HRS):
From January 1, 2009 through May 7, 2009: 40% of the wholesale price.
From May 8, 2009 through September 29, 2009: No tax.
From September 30, 2009: 50% of the wholesale price.

This announcement does not address the taxation of cigarettes. For more information on Act 58, please contact the Rules Office at 808-587-1577.



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