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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2009-08

RE: Act 134, Session Laws of Hawaii 2009, Relating to Tax Administration.

On June 18, 2009, Governor Linda Lingle signed Senate Bill 972 SD2, HD1, CD1 into law as Act 134, the "Cash Economy Enforcement Act of 2009."

This Act provides the department with additional resources and tools to target high-risk, cash-based transactions to shore up confidence in Hawaii's tax system. In this regard, this measure ensures that all sectors of Hawaii's economy, including those prone to substantial underreporting, are paying their fair share of taxes.

This Act focuses on the civil collection and enforcement nature of Hawaii's tax laws, by establishing the Special Enforcement Section, a group of tax officials charged with handling sensitive and high-risk civil tax cases as directed by the director. This Act also provides various enforcement tools, including the authority to issue monetary fines and cease and desist citations.

This Special Enforcement Section will investigate reported or suspected violations of tax laws for civil enforcement purposes with a stated priority of investigating cash-based businesses. The personnel assigned to the Special Enforcement Section are not allowed to participate in any criminal investigations.

A cash-based business is defined as a person who operates a business, including for-profit or not-for-profit, where transactions in goods or services are exchanged substantially for cash and where the business is found to have met one or more of a number of factors, which include, substantially underreporting or misreporting the proper amount of tax liability on any tax return, failing to have a license to do business as required by law, having no fixed and permanent principal place of business, or not accepting checks or electronic payment devices for business transactions.

The Special Enforcement Section is authorized to inspect books, records, and premises, without notice, if a warrant or writ of entry is issued by a circuit court based upon probable cause, and may seize and levy any assets in the custody or control of the person.

The Special Enforcement Section may issue cease and desist citations to any person if there is cause to believe the person has violated, is violating, or is about to violate any provision of title 14 or administrative rule adopted thereunder, which may be appealed to the director and then the circuit court.

The Special Enforcement Section may bring civil actions in the circuit court to enjoin any unlawful act under title 14 by a cash-based business.

This Act adds a number of new civil tax-related fines, applicable to both cash-based and noncash-based businesses:

- A fine for failing to produce upon demand by the Special Enforcement Section any license or permit required under title 14. The fine may not exceed $1,000 for cash-based businesses, and may not exceed $500 for all other persons.

- A fine for failing to produce any books or records upon demand of the Special Enforcement Section, if those books or records must be kept pursuant to a provision of title 14. The fine may not exceed $2,000 for cash-based businesses, and may not exceed $1,000 for all other persons.

- A fine for conducting more than ten taxable business transactions per day in cash and failing to provide a receipt or other record of the transaction when the means for issuing a receipt or recording the transaction are available. The fine may not exceed $2,000 for cash-based businesses, and may not exceed $1,000 for all other persons.

- A fine for conducting more than ten taxable business transactions per day in cash and failing to record the transaction in a cash register when the means for recording the transaction in the cash register are available. The fine may not exceed $2,000 for cash-based businesses, and may not exceed $1,000 for all other persons.

- A fine for selling, offering to sell, or otherwise conveying more than one price for any business to be transacted when the lower price is offered if the transaction is paid for in cash, unless there is a legitimate business purpose for the separate prices. The fine may not exceed $3,000 for cash-based businesses, and may not exceed $2,000 for all other persons.

- A fine for a person engaging in business in this state for possessing currency in the form of coin or note, where the possession is for tax avoidance purposes. The burden of proof for establishing tax avoidance purposes is on the department. The fine may not exceed $3,000 for cash-based businesses, and may not exceed $2,000 for all other persons.

- A fine for any person intentionally interfering with, hindering, obstructing, preventing, or impeding any investigator, auditor, collector, or other employee of the department from obtaining license information, books, records, articles, or item of business transacted, or other information or property rightfully entitled to the department. The fine may not exceed $2,000. A showing of good cause is an absolute defense to this fine.

- A fine for any person who receives gross income from business conducted in the state without first obtaining a license under chapter 237. The fine may not exceed $2,000 for cash-based businesses, and may not exceed $500 for all other persons. The director may waive this fine upon a showing of good cause.

This Act also makes it a crime for any person to interfere, hinder, obstruct, prevent, or impede any investigator or employee of the department with violence or threat of violence.

This Act also adds a reporting requirement to the General Excise Tax Law (Chapter 237, HRS) for contractors on a federal construction project. With respect to any construction project located in the State undertaken pursuant to a federal contract, all persons working on the contract who do not possess a valid general excise tax license at the time a federal contract is awarded must report to the department the estimated gross receipts from the construction project and any other information requested by the department on Form G-15, "Information Return for Unlicensed Contractors on Federal Construction Projects." This form must be filed within thirty days of the contract being awarded. Failure to report will result in a penalty of $1,000 per month, or fraction thereof, for each month that a failure to report exists, up to a maximum penalty of $6,000.

The provisions in this Act became effective upon approval, except that the citable offenses provided for in Section 2 of the Act became effective on July 1, 2009, and all the provisions will be repealed on June 30, 2014.

Additional information regarding the implementation of this Act will be made available as it is developed by the department. For more information on Act 134, please contact the Rules Office at 808-587-1577.



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