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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2010-03

RE: Increase in the Cigarette Tax on July 1, 2010

Act 59, Session Laws of Hawaii 2010 (Act 59), increases the excise tax per cigarette sold in Hawaii.

Section 245-3, Hawaii Revised Statutes, was amended by increasing the excise tax per cigarette to the following amounts:

15.00 cents per cigarette on and after July 1, 2010;
16.00 cents per cigarette on and after July 1, 2011.

The tax is collected by the Department of Taxation (Department) when cigarette and tobacco wholesalers and dealers purchase cigarette tax stamps, and place the stamps on cigarette packs prior to distribution. The current cigarette tax stamps are red;[1] new yellow tax stamps will be issued to implement the increase in the tax rate.[2] *This announcement discusses the procedures for handling the increase in the price of the tax stamps by either returning unused rolls of stamps for credit or paying the difference for purposes of the July 1, 2010 tax increase. Subsequent increases will be addressed in subsequent announcements before each increase in tax becomes effective.*

I. Impact on Consumers

Consumers will see cigarette packs with red stamps and cigarette packs with yellow stamps. It is legal for retailers to continue to sell cigarette packs with the red stamps on or after July 1, 2010, under certain circumstances described immediately below.

II. Impact on Retailers

Retailers may continue to sell cigarette packs stamped with the current red tax stamps if: (1) the retailers have the cigarette packs with red stamps affixed in their inventory as of July 1, 2010; or (2) the

[1] The red stamps (with a denominated value of $2.60) have been sold from June 22, 2009, light brown stamps (with a denominated value of $2.00) have been sold from September 2, 2008, and prior to that violet stamps (with a denominated value of $1.80) were sold, beginning September 4, 2007.

[2] The denominated value of the yellow stamp will be $3.00.

cigarette packs with red stamps affixed were received from licensed wholesalers and dealers on or after July 1, 2010. Retailers may have to explain to consumers the reason for the different colored stamps.

The law does not require retailers, who purchase cigarettes from licensed wholesalers and dealers, to collect the increase in cigarette taxes on July 1, 2010, as the tax is imposed on wholesalers and dealers. However, if wholesalers and dealers pass on the additional tax to the retailers, they may pass on the additional tax to customers.

III. Impact on wholesalers and dealers

A. Filing of a Cigarette Tax Stamps Floor Stock Return; Use of Yellow Stamps

Act 59 requires every wholesaler and dealer to pay a tax of 15 cents per cigarette for each cigarette sold, used, or possessed on or after July 1, 2010 (and increasing thereafter pursuant to the schedule provided on page 1 of this Announcement).

In order to avoid wholesalers and dealers returning unused red stamps and cigarette packs with red stamps, all wholesalers and dealers must file Form M-107 (Rev. 2010), Cigarette Tax Stamps Floor Stock return. The purpose of Form M-107 is to collect the difference in price between the new yellow stamp and current red stamp for every unused or affixed stamp in the wholesaler/dealer's ending inventory on June 30, 2010 ($3.00 per pack/$0.15 per cigarette versus $2.60 per pack/$0.13 per cigarette).

Once the floor stock return Form M-107 has been filed and the difference in the tax has been paid, the red stamps may be used until depleted, allowing wholesalers and dealers to affix red stamps to cigarette packs on or after July 1, 2010. The stamp fee imposed under section 245-26, HRS,[3] and the discount provided under section 245-22, HRS, [4] will be applicable to the difference in the tax reported on the floor stock return. Please note that the floor stock returns are subject to audit.

The yellow stamps will be available for purchase from First Hawaiian Bank beginning June 23, 2010. The price of a roll of yellow stamps will be: $45,585.00.

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[3] Section 245-26(a), HRS, provides: "Stamps shall be sold at their denominated values, plus a stamp fee of 1.7 percent of the denominated value of each stamp sold, composed of the aggregate of:

(1) .2 percent of the denominated value of the stamp to pay for the cost to the State of providing the stamps, with such amount to be deposited to the credit of the Department of Taxation's cigarette tax stamp administrative special fund; and

(2) 1.5 percent of the denominated value of the stamp to pay for the cost of enforcing the stamp tax, with such amount to be deposited to the credit of the Department of the Attorney General's tobacco enforcement fund; provided that the Department of Taxation by rule may modify the stamp fee to reflect actual costs incurred by the State in providing the stamps."

[4] Section 245-22(e), HRS, allows stamps to be sold with a 0.4 percent discount to defray the cost of affixing the stamps incurred by vendors. The Department may adjust the discount by rule. The discount is effective beginning September 1, 2001.

B. Purchasing Stamps on a Deferred Payment Plan

Wholesalers and dealers purchasing stamps on a deferred payment plan may increase the amount of their deferred payment purchases by the following:

- 15.38% (($3.00 - $2.60)/$2.60) if their cigarette tax stamp deferred payment agreement was approved when the cigarette tax was 13 cents per cigarette.

No increase in bond coverage is necessary for the July 1, 2010 rate increase. However, all requests by stamp purchasers to increase the amount of deferred payment purchases must be provided in writing and sent to the following address:

Licensing Section
Taxpayer Services Branch
Department of Taxation
PO Box 259
Honolulu, Hawaii 96809

The Department is in the process of revising the cigarette and tobacco tax forms to reflect the increase in the tax rate for sales, use, or possession of cigarettes on or after July 1, 2010.

C. Change in Due Date

Act 22, Session Laws of Hawaii 2010, has changed the due date for the cigarette tax forms, Form M-19, Cigarette and Tobacco Products Monthly Tax Return, and Form M-110, Cigarette Tax Return, from the last day of the month to the twentieth day of the month beginning July 1, 2010. However, the Department will waive penalties and interest on any returns filed between the twentieth day of the month and the last day of the month for any returns filed for periods up through December 2010. Returns filed for periods after December 31, 2010 will be assessed penalties and interest. Please see Announcement 2010-02 for more information.

Current forms and other tax information are available at the Department's website at: www.hawaii.gov/tax. Forms and publications may be ordered by calling the Department's Customer Call Center at: (808) 587-4242. Persons who are calling from outside of Oahu may call: 1-800-222-3229 (toll-free) to receive forms and publications by mail.

KURT KAWAFUCHI
Director of Taxation

HRS Section Explained: HRS Sections 245-3, 245-22, and 245-26.