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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2011-03

RE: Adoption of Hawaii Administrative Rules Relating to Tax Penalties

Administrative rules providing guidance to taxpayers and tax practitioners on certain tax penalties has been adopted by the Department of Taxation (Department) and signed by Governor Linda Lingle. The final administrative rules took effect on November 18, 2010.

Pursuant to its authority under Section 231-10.6, Hawaii Revised Statutes, the Department issued temporary administrative rules providing guidance in the application of the following penalties passed during the 2009 legislative session:

- Penalty for understatement of tax liability by a tax return preparer, HRS § 231-36.5;
- Penalty for substantial understatement or misstatement of tax, HRS § 231-36.6 ;
- Penalty for promoting abusive tax shelters, HRS §231-36.7; and
- Penalty for erroneous refund claims, HRS § 231-36.8.

Taxpayers and tax practitioners were advised in Tax Announcement 2009-25 to amend any prior year's return that may be in violation of the foregoing penalties as a result of the retroactive effective date contained in Act 166, Session Laws of Hawaii 2009. Section 27 of Act 166 made certain penalties and acts, including the foregoing penalties, retroactive for any return where the statute of limitations remained open; provided that no such penalty may be assessed if an amended return was filed by October 1, 2009. Taxpayers had until October 1, 2009 to file an amended return curing any defect, which could result in a penalty under Act 166. Temporary rules became effective seven days after public notice was issued on September 9, 2009 and were effective until 18 months following that date. The final rules were signed within this time period so there is no lapse in the application of these administrative rules.

Copies of the final administrative rules are available at the Department's website, the Lieutenant Governor's website, and at the offices of the Department.

If you have additional questions, please contact the Department at 587-1577.

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