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June 30, 2011

DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2011-12

RE: Act 32, Session Laws of Hawaii 2011, Relating to Use Tax

On April 29, 2011, Governor Neil Abercrombie signed into law Senate Bill 1318 SD1 as Act 32, Session Laws of Hawaii 2011.

This Act clarifies the current application of the use tax by eliminating overbroad and redundant language in a provision relating to interstate commerce activities.

In Act 74, Session Laws of Hawaii 1979, the legislature amended the tax law to prevent the application of Hawaii general excise or use tax to certain interstate commerce activities of common carriers, which the legislative history identifies as primarily those involved in stevedoring and other similar activities. Act 74 was enacted in response to a United States Supreme Court opinion that expanded the State's ability to tax interstate commerce. In order to prevent the State from taxing stevedoring and other similar activities, Act 74 was enacted.

Since the enactment of Act 74, the tax laws have been amended to expressly exempt the particular stevedoring and other interstate commerce activities originally intended to be exempted by the legislature by Act 74. Specifically, the general excise tax was amended to expressly exempt these activities under HRS § 237-24.3(4). Because the use tax law automatically exempts any transaction exempt under the general excise tax law, language in the use tax law referencing Act 74 is redundant and unnecessary.

Although the exemption under HRS § 237-24.3(4) was suspended in Act 105, Session Laws of Hawaii 2011, for two years, Act 105 provides for a limited exemption for certain stevedoring activity that will accordingly be exempt from the use tax during the period of HRS § 237-24.3(4)'s suspension.

Act 32 took effect upon approval.

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

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