JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

GARY S. SUGANUMA
DIRECTOR OF TAXATION

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
Ka 'Oihana 'Auhau
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1530
FAX NO: (808) 587-1584

April 5, 2023

DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2023-01

RE: Tax Treatment of Certain Red Hill Bulk Fuel Storage Facility on Oahu ("Red Hill Fuel Spill") Payments

On April 5, 2023, the Internal Revenue Service (IRS) issued guidance in Announcement 2023-07 (copy attached) stating that the Red Hill Fuel Spill is a qualified disaster for purposes of Internal Revenue Code (IRC) section 139(c)(4). They added that the Emergency and Extraordinary Expense ("EEE") payments made to certain civilians affected by the Red Hill Fuel Spill are qualified disaster relief payments and therefore not taxable income.

Hawai'i adopts IRC section 139 in its entirety without modification for Hawai'i Net Income ("NI") Tax purposes under Hawai'i Revised Statues (HRS) section 235-2.3, and these EEE payments are also excluded from Hawai'i NI to the extent it is excluded from federal income taxation.

For Hawai'i resident taxpayers, this amount is already excluded and no other action is required.

Taxpayers who have already filed and reported the EEE payments on their NI tax returns may amend their 2022 Hawai'i tax returns to exclude EEE payment amounts that were previously included on their original 2022 tax return. When submitting your amended return, attach Schedule AMD to report the exclusion of the EEE payment amounts and enter "Red Hill Fuel Spill" as the reason for the amendment under the Explanation of changes column. Hawai'i accepts paper and electronically filed amended income tax returns.

If you have any questions, please contact the Hawai'i Department of Taxation Technical Section by calling (808) 587-1577 or by email at tax.technical.section@hawaii.gov.

/s/
GARY S. SUGANUMA
Director of Taxation

Section Explained: HRS §235-2.3

Attachment – IRS Announcement 2023-07

Part IV – Items of General Interest

FEDERAL TAX TREATMENT OF CERTAIN RED HILL FUEL SPILL PAYMENTS

Announcement 2023-07

This announcement informs Federal civilian employees and other civilians who are not employed by the Federal government who received certain payments in 2022 and 2023 from the Department of Defense (DOD) in reimbursement for lodging, meals, and personal property damage expenses after the release of petroleum from the Red Hill Bulk Fuel Storage Facility on Oʻahu, Hawaii (Red Hill Fuel Spill) that such payments are excludable from gross income for Federal income tax purposes under § 139 of the Internal Revenue Code.

On November 28, 2021, the United States Navy detected the Red Hill Fuel Spill and subsequent contamination of the Joint Base Pearl Harbor-Hickam (JBPHH) Water System servicing Red Hill and surrounding areas. On December 3, 2021, the Commander, Navy Region Hawaii issued an evacuation authorization (CNRH Evacuation Authorization) for DOD civilian employees and their dependents, civilians nonaffiliated with DOD, and dependents of active-duty personnel not accompanying such personnel living in communities serviced by the JBPHH Water System. The duration of the order was extended twice, on December 14, 2021, and December 23, 2021. On December 9, 2021, the Commanding General of U.S. Army Pacific issued an evacuation authorization (CG USARPAC Evacuation Authorization) for residents of the

Aliamanu Military Reservation, Red Hill, and surrounding areas, effective December 2, 2021, in light of unusual and emergency circumstances arising from the Red Hill Fuel Spill. The CG USARPAC Evacuation Authorization applied to all DOD personnel and civilian employees and their dependents living in the relevant areas. Additional communities were added to the CG USARPAC Evacuation Authorization pursuant to addenda issued on December 10, 2021, and December 11, 2021. The CG USARPAC Evacuation Authorization authorized but did not direct evacuation, allowing individuals to choose to remain in their residences without use of potable water utilities.

On February 18, 2022, the Commander, Navy Installations Command sought authority from the Secretary of the Navy (SECNAV) to make payments to the civilians who were covered by the CNRH Evacuation Authorization and the CG USARPAC Evacuation Authorization and addenda thereto (collectively, Affected Civilians) pursuant to SECNAV's "Emergency and Extraordinary Expense" authority under 10 U.S.C. § 127 (EEE Payments). SECNAV approved the making of EEE Payments to Affected Civilians in a memorandum dated February 25, 2022.

Starting in 2022, DOD made three types of EEE Payments to Affected Civilians. First, DOD made EEE Payments to reimburse lodging and meal expenses of Affected Civilians who did not have potable water in their homes and who opted to relocate pursuant to the CNRH Evacuation Authorization and CG USARPAC Evacuation Authorization. Second, DOD made EEE Payments to reimburse meal expenses of Affected Civilians who opted to remain in their housing without the use of potable water utilities. Third, DOD made EEE Payments to reimburse personal property damage expenses of some Affected Civilians.

To respond to questions raised concerning the Federal income tax treatment of EEE Payments made by DOD to Affected Civilians, this announcement explains that Affected Civilians receiving EEE Payments may exclude such payments from gross income, to the extent the cost reimbursed by the EEE Payment was not also compensated for by insurance or otherwise, because they are qualified disaster relief payments within the meaning of § 139 of the Internal Revenue Code.

Specifically, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) have determined that the Red Hill Fuel Spill is a qualified disaster for purposes of § 139(c)(4) that was determined by SECNAV (an applicable Federal authority) to warrant assistance from DOD (a Federal agency or instrumentality). Additionally, the Treasury Department and the IRS have determined that the EEE Payments are qualified disaster relief payments for purposes of § 139(b)(4), as they are amounts paid to or for the benefit of an Affected Civilian (an individual) by DOD (a Federal agency or instrumentality) in connection with the Red Hill Fuel Spill (a qualified disaster) in order to promote the general welfare (and are not compensation for services).

Accordingly, EEE Payments made by DOD to Affected Civilians in connection with the Red Hill Fuel Spill, including reimbursement of lodging and meal expenses for those Affected Civilians who did not have potable water in their homes and who opted to relocate, reimbursement for meal expenses for those Affected Civilians who opted to remain in their homes, and reimbursement for personal property damage expenses of some Affected Civilians, are qualified disaster relief payments within the meaning of § 139(b)(4) that are excludable from the gross income of Affected Civilians to the extent

not compensated for by insurance or otherwise.

INSTRUCTIONS FOR AFFECTED CIVILIANS WHO HAVE NOT YET FILED TAXABLE YEAR 2022 INDIVIDUAL FEDERAL INCOME TAX RETURNS

Affected Civilians who have not filed their taxable year 2022 individual Federal income tax returns should not include any EEE Payment amounts (reflected on Form 1099-MISC, *Miscellaneous Income*) in gross income on their taxable year 2022 returns, except to the extent the cost reimbursed by the EEE Payment was also compensated for by insurance or otherwise.

INSTRUCTIONS FOR AFFECTED CIVILIANS WHO ALREADY HAVE FILED TAXABLE YEAR 2022 INDIVIDUAL FEDERAL INCOME TAX RETURNS

Affected Civilians may amend their taxable year 2022 Federal income tax returns by filing Form 1040-X, *Amended U.S. Individual Income Tax Return*, to exclude EEE Payment amounts (reflected on Form 1099-MISC, *Miscellaneous Income*) that were previously included on original taxable year 2022 individual Federal income tax returns, to the extent the cost reimbursed by the EEE Payment was not also compensated for by insurance or otherwise. The IRS accepts paper and electronically filed Forms 1040-X.

- If filing Form 1040-X electronically, include “Red Hill Relief” at the beginning of Part IV, Explanation of Changes.
- If filing Form 1040-X on paper:
    - Include “Red Hill Relief” at the top of Form 1040-X. Also, include “Red Hill Relief” at the beginning of Part III, Explanation of Changes, and
    - Mail the Form 1040-X to:

      Department of the Treasury
      Internal Revenue Service
      Austin, TX 73301-0052

The principal author of this announcement is Jonathan A. Dunlap of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this announcement contact Mr. Dunlap at 202-317-4718 (not a toll-free call).