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STATE OF HAWAII
DEPARTMENT OF TAXATION
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February 18, 1999

Ms. Rebecca A. Koses
Contracting Officer
Services Acquisition Center
U.S. General Services Administration
1941 Jefferson Davis Highway, Rm. 507
Arlington, VA 22202

Dear Ms. Koses:

This responds to your letter dated December 10, 1998, asking for our continued support of the GSA SmartPay card programs by continuing to extend tax exemption status for Federal Government credit card purchases.

Your letter stated that effective November 30, 1998, the United States Government implemented a new credit card program that replaced its purchase cards (I.M.P.A.C.) travel cards (American Express), and fleet cards (Wright Express) with one consolidated program. This new program is called "GSA SmartPay". Instead of a single provider of card based services, the Federal Government has awarded multiple contracts. Cards will now be issued by Citibank, First National Bank of Chicago, NationsBank, Mellon Bank and U.S. Bank. All cards issued will have unique prefixes and account numbers, government-designed artwork, and wording that denotes the card is for use by the United State of America.

You further asked that we review and rescind any requirement for the Federal Government to provide a tax exemption certificate when a Federal Government credit card is used as the method of purchase.

Hawaii's taxes may be applicable to purchases by federal government employees even if the transaction is billed to and paid by the government. The issuance of new charge cards by the federal government for travel and to purchase goods and services for official business while in Hawaii does not affect the application of Hawaii's taxes.

The following information is provided to you with respect to the usage of the new credit cards as it applies to Hawaii's general excise, transient accommodations, and rental motor vehicle surcharge taxes.

Hawaii does not have a sales tax; however, a general excise tax is levied against every person engaging in business within the State. The general excise tax is different from sales tax in two major ways. First, the general excise tax is imposed on the business instead of on the customer. The general excise tax, therefore, is considered to be an expense which businesses incur in the normal course of doing business in Hawaii, along with other expenses such as labor costs, utility bills, supplies, cost of inventory, and the like. Second, the general excise tax is levied on gross income from almost all types of business activities, not just retail sales. Chapter 237, Hawaii Revised Statutes (HRS), imposes the general excise tax against persons engaged in business in Hawaii. The seller must compute the tax on the total gross receipts, which includes any amount of the tax passed on to the customer. In practice, the amount of the tax is usually passed on by the seller to the customer. The passing on of the tax is deemed a matter of contractual agreement between the two parties; it is not a statutory requirement.

Section 237-25, HRS, exempts from the general excise tax the gross income derived from the sale of tangible personal property to the United States, including any wholly owned agency or instrumentality thereof. However, the sale of services to the United States government is not exempt from the general excise tax. In the cases of services rendered in which tangible personal property is provided, there is no exemption from the tax even though the tangible personal property is segregated or billed separately from the services. The exemption from taxation under this provision does not extend to goods or services sold to employees of the United States government for their personal use.

Furthermore, the sale of lodging, meals, car rentals, and related items to a federal government employee traveling on official business is not exempt from the general excise tax. The sale of gasoline or oil also is not exempt from the general excise tax if the motor vehicle is owned by the employee or is rented from a car rental agency. However, the sale of gasoline or oil for a motor vehicle owned by the federal government used for official government business is exempt from the general excise tax.

Chapter 237D, HRS, imposes a transient accommodations tax (TAT) upon every person engaged in the business of furnishing transient accommodations in Hawaii. It is often mistakenly called a hotel room tax. Generally, hotel room taxes apply to hotel rentals only; the TAT applies to all transient accommodations. The hotel room tax also is imposed on the guests or tenants who are renting hotel rooms; the TAT, instead is levied on the operator of the transient accommodations. As a matter of customary business practice, the amount of the tax is passed on to the occupant by the operator; it is not a statutory requirement.

Chapter 237D, HRS, has no statutory provisions exempting an operator from the TAT for accommodations furnished to federal government employees while in Hawaii on business. Section 237D-3, HRS, however, provides a specific exemption for operators providing transient accommodations to military personnel receiving temporary lodging allowances (TLA) while

seeking accommodations under a permanent change of station to Hawaii or while awaiting reassignment to a new duty station outside the state of Hawaii. The exemption is applicable only to military personnel furnishing documentation to the lodging operator of their authorized TLA status.

Chapter 251, HRS, imposes a rental motor vehicle surcharge tax of $2 a day or any portion of a day that a rental motor vehicle is rented or leased. The tax is levied on the lessor, not the lessee. As with the general excise and transient accommodations taxes, the amount of the tax is passed on to the lessee; it is not a statutory requirement. The statute does not exempt a lessor renting a motor vehicle to federal government employees while in Hawaii on business from the rental motor vehicle surcharge tax.

Hawaii does not require the use of tax exemption certificates. Therefore, tax exemption certificates are not required when (1) there is a sale of tangible personal property to the United States government, including any wholly owned agency or instrumentality thereof; (2) there is a sale of gasoline or oil for a motor vehicle owned by the federal government used for official government business; and (3) providing transient accommodations to military personnel receiving temporary lodging allowances (TLA) while seeking accommodations under a permanent change of station to Hawaii or while awaiting reassignment to a new duty station outside the state of Hawaii.

Tax Information Release No. 91-3 relating to the U.S. Government IMPAC Visa credit card is enclosed for your information. If you have further questions regarding this matter, please direct your correspondence to the attention of Fern Elizares at (808) 587-1577.

Very truly yours,

RAY K. KAMIKAWA
Director of Taxation

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