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July 8, 2011

NOTICE TO THE TRADE – DeCA NOTICE 11-95

SUBJECT: Possible Changes in the Application of the Hawaii General Excise and Use Tax

On June 9, 2011, the Governor of Hawaii signed into law Senate Bill 754 SD1, HD1, CD1 as Act 105, Session Laws of Hawaii 2011, Relating to Taxation. This Act suspended temporarily the exemptions for certain persons and certain amounts of gross income or proceeds from the Hawaii general excise and use tax, which may require the payment of both taxes for some companies that do business with the DeCA commissaries in Hawaii. These changes became effective on July 1, 2011.

Details of these changes are outlined in a series of public announcements issued by the Hawaii Department of Taxation, most notably:

- Announcement 2011-09, dated June 15, 2011
- Announcement 2011-10, dated June 23, 2011
- Announcement 2011-12, dated June 30, 2011

Copies of these announcements, as well as additional information about these changes, may be downloaded from the Hawaii Department of Taxation Web site at <http://hawaii.gov/tax/>. According to the Web site, questions concerning these recent changes should be referred to the Hawaii Department of Taxation's Rules Office at 808-587-1577.

In discussions with the Hawaii Department of Taxation, DeCA outlined the current process for delivery of goods to the commissary stores in Hawaii, that the goods were delivered FOB to the commissary dock. Based upon the above, it is DeCA's understanding that the general excise tax may not be applicable to goods delivered from other states directly to the commissary. Additionally, the discussions also considered the issue that some of the goods destined for the commissary may be warehoused in Hawaii for a few days and cross-docked before being delivered to a commissary store. Under the above facts that may create the necessary nexus that would trigger the applicability of the Hawaii general excise tax to those goods. It is our understanding that goods delivered from a supplier based in Hawaii may be subject to the tax unless the exemption is continued.

DeCA's Industry partners should NOT rely on DeCA's understanding of the applicability of the Hawaii general excise tax for goods delivered to its stores, rather DeCA's exploration of this issue was to serve as starting point for each Industry source to consult with your own tax advisor to determine whether the Hawaii general excise tax is applicable to their specific operation.

IMPORTANT NOTICE: It is the sole responsibility of each company to determine the applicability of the Hawaii general excise tax to their operation and price their goods accordingly.

//signed//
Christopher T. Burns
Director of Sales