General Services Administration

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GSA SMARTPAY® SMART BULLETIN

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Federal Acquisition Service
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General Excise Taxation of Sales of Tangible Personal Property in Hawaii

EFFECTIVE DATE: This Smart Bulletin becomes effective upon issuance and shall remain in force until modified or rescinded.

INTRODUCTION:
The purpose of this Smart Bulletin is to clarify the application of the general excise tax to sales of tangible personal property to the Federal government (Act 105, Session Laws of Hawaii (SLH) 2011), and to clarify the Hawaiian state grandfathering rules of Act 105 for Requests for Proposals (RFPs) issued by the Federal government.

BUSINESS LINE(S) AFFECTED: Purchase and Integrated (purchase only)

SUMMARY:

Sales of Tangible Personal Property to the Federal Government and Credit Unions
It is important to note that excise taxes are not charged directly to consumers. In most cases, an excise tax is a tax paid by merchants as part of doing business in a state. The merchant pays the excise tax directly to the state however, consumers may also see an increase in prices as a result of the excise tax levied upon the merchant's business.

Section 237-25(a)(3), Hawaii Revised Statutes (HRS), exempts the general excise tax on all sales as well as the gross proceeds of all sales of tangible personal property sold by any person licensed under Chapter 237, HRS, to the United States (including any agency, instrumentality, or Federal credit union thereof but not including national banks), and to any state-chartered credit union.

The exemption provided in 237-25(a)(3), HRS, has been temporarily suspended by Act 105 SLH 2011, for the period from July 1, 2011 through June 30, 2013. The suspension means that the gross income derived from sales of tangible personal property to the Federal government will no longer be exempt from the general excise tax and will be taxable at the 4% rate. However, amounts for which the general excise tax exemption is temporarily suspended will continue to be exempt from the county surcharge of 0.5%.

Section 2 of Act 105, SLH 2011, creates a new section under Chapter 237, HRS, which provides for the suspension of the exemption. Under this new section, subsection (b) provides that the previously exempt income is taxable at the rate of 4%. Therefore, gross income derived from sales of tangible personal property to the Federal government is NOT taxable at the wholesale rate of 0.5% even though the Federal government (e.g., commissary) may "resell" the tangible personal property.2 *See* HRS section 237-4(a)(1). Whether the transaction qualifies as a wholesale transaction taxable at 0.5% is irrelevant in light of Act 105's provision imposing tax at the 4% rate.

Grandfathering Rules Applicable to Request for Proposals Issued by the Government
Act 105 states that gross income from "binding written contracts entered into prior to July 1, 2011, that does not permit the passing on of increased rates of taxes" will be exempt from general excise tax even if the amounts would be made taxable by the suspension of an exemption. In Tax Announcement 2011-10, the Department provided special rules for government contracts executed in response to an invitation to bid so that a bid in response to an invitation to bid would be treated as a binding written contract for purposes of Act 105 if the bid or award was made prior to July 1, 2011, and the accepted bid or award ultimately resulted in a fully executed written contract.

Unlike bids in response to an invitation to bid, a proposal in response to a request for proposal issued by a local, state, or Federal government will not be treated as a binding written contract. However, an award in response to a request for proposal will be treated as a binding written contract and will be grandfathered from the suspension of an exemption in Act 105, provided the award is made before July 1, 2011, and results in a fully executed written contract.

This bulletin relates to the United States Government charge cards issued under the "GSA Smart Pay" Program and references the general excise tax exemption for sales of tangible personal property to credit unions. This is a temporary suspension of the exemption outlined in 237-25(a)(3), HRS. For more information, contact the Technical Section at (808) 587-1577 or by e-mail at Tax.Technical.Section@hawaii.gov.

Summary:
The Hawaiian government is not assessing a tax directly on government spend; they are suspending an exemption of an excise tax on businesses in Hawaii. The excise tax may be embedded in the price charged to the business' customers and may be passed along to the Federal government. The Federal government has no recourse in the matter.

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If you have any questions or comments regarding this Smart Bulletin, please contact the Office of Charge Card Management (OCCM) at 703-605-2808 or via email at: gsa_smartpay@gsa.gov

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