



CERTIFIED PUBLIC ACCOUNTANTS

Tax News Flash

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Announcing the 2011 Hawaii Tax CD

As in prior years, we have been developing and will share with clients and friends the Hawaii Tax CD. In this, the fifth year Acuity is publishing this reference tool, we include information released by the Department of Taxation, other state agencies, the counties, and Acuity. It is fully paperless and easily searchable. Some of the information on this CD is difficult to find elsewhere.

As with last year, we are making our CD available *upon request*. There is no charge. If you are interested in getting one, please send an email with your name, company name, and physical mailing address (there is too much information to email) to [Lehua Thompson](mailto:Lehua.Thompson).

Enhanced 1099 Requirements Facing Possible Repeal

We previously reported that section 9006 of the federal 2010 Health Care Act would substantially expand the Form 1099 reporting provisions for most payers, including extending them to payments for goods as well as services, and to payments to for-profit corporations. Those enhanced requirements are scheduled to take effect on January 1, 2012.

In addition, we previously reported that IRC section 6041(h), signed into law last September as part of the Small Business Jobs Act of 2010, requires people who have rental properties to report deductible payments over \$600 the same as any other trade or business. That requirement became effective this year, for payments made on or after January 1, 2011.

Both requirements are facing possible repeal through actions in both houses of Congress.

On February 17, the Senate by a vote of 87-8 approved S.223, the FAA Air Modernization and Safety Improvement Act. The bill includes an amendment offered by Senator Debbie Stabenow (D-MI) that would repeal section 9006 as if it never existed. The bill will be sent to the House for consideration. This bill does not touch section 6041(h).

On the same day, the House Ways and Means Committee by a vote of 21-15 approved H.R. 705, the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy

Overpayment Act of 2011. This bill would repeal or modify section 9006, and in addition seeks to repeal Code Sec. 6041(h).

These actions, coupled with some remarks in President Obama's State of the Union address, raise the possibility that one or both of these requirements may be on the way out. Like it or not, however, both section 9066 and section 6041(h) are law, and 6041(h) is effective now. The Congressional bills are still proposals, and are not law. We'll let you know when something more definitive comes out of Washington.

Hawaii Supreme Court Upholds Use Tax in *CompUSA*

On February 14, the Hawaii Supreme Court issued a major decision, [*CompUSA Stores L.P. vs. Department of Taxation*](#), upholding the wholesale rate Use Tax against challenge.

For those unfamiliar with the Use Tax, it's a tax on imports, and it is meant to help taxpaying local businesses. Here's how it works. A consumer who wants to buy a car, let's say, has a choice of either buying it from a local store or buying it from somewhere outside Hawaii and then shipping it in. If the consumer goes to a local car dealership, General Excise Tax of 4% (4.5% on Oahu) will need to be paid. That tax presumably won't apply to a dealership not doing business in Hawaii, so is that a reason for the consumer to shun the local dealership? The answer is no, because the Use Tax kicks in and the consumer will have to pay the 4% or 4.5% directly to the State when the car is shipped in. The tax will have to be paid in either case, so the local dealership can then compete for the consumer's business on other factors.

The Use Tax also applies to retailers. A retailer has a choice of either buying their wares from a local supplier, or buying from somewhere outside Hawaii. If the retailer goes to the local supplier, GET of 0.5% needs to be paid. Thus, if the retailer instead goes to the out-of-state supplier, the law says that Use Tax of 0.5% is to be assessed.

In 2004, the Hawaii Supreme Court decided *Baker & Taylor, Inc. v. Kawafuchi*, 103 Hawaii 359 (2004). Baker & Taylor was a North Carolina-based company. It negotiated a large contract to sell books to the Hawaii State Library. It then claimed that its contract was an out-of-state transaction so no Hawaii tax was due. The Department of Taxation was able to convince the court that its large contract was sufficient Hawaii activity to allow the State to impose GET on the sales. (Note that the Department didn't have the option to go after the Library for Use Tax. The Library is a state agency and doesn't pay state tax.) It didn't stop there, however; it told the court that it also wanted to assess the 0.5% Use Tax. On that point the court sided with the taxpayer, ruling that Baker & Taylor "could not import from itself or purchase from itself."

CompUSA, which at that time was a large retailer of consumer electronics and related supplies, contended that the same reasoning insulated it from Use Tax. It bought inventory for its stores centrally on the Mainland. Some of that inventory was then shipped to Hawaii and sold locally. It paid GET on its sales, but contended that it wasn't subject to the Use Tax because that would be a tax on "importing from itself" or "purchasing from itself." (A number of other taxpayers also took this position and had cases pending.) The Tax Appeal Court entered judgment against CompUSA for \$1.7 million, but the Intermediate Court of Appeals considered itself bound by *Baker & Taylor* and reversed the award.

The Hawaii Supreme Court reinstated the judgment. The court noted that the Use Tax attaches to the use of goods within Hawaii and is imposed on the purchaser of the goods who makes use

of them. Baker & Taylor didn't use the goods in Hawaii. Once it sold the books and once the title to them passed to the Library on the mainland, Baker & Taylor no longer owned them, and it had no presence in Hawaii so it could not make any use of them. CompUSA, on the other hand, purchased its goods, held the title to the goods by the time they arrived in Hawaii, and used them by holding them for sale. CompUSA's suppliers, rather than CompUSA, were in a situation similar to that of Baker & Taylor. CompUSA imported and used the goods, and was therefore liable for the wholesale rate Use Tax.

If you have questions about any of these news items, your client service team at Accuity can bring you the resources that you may need.

Please do not hesitate to contact your client service team for more information or Tom Yamachika at thomas.yamachika@accuityllp.com



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